

N. 2942

No. 14798

---

United States  
Court of Appeals  
for the Ninth Circuit

JAMES TAYLOR YOKELY,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

---

Appeal from the District Court  
for the District of Alaska,  
Third Division

FILE

DEC 27 1955

PAUL P. WINGEN, CLERK



No. 14798

---

**United States  
Court of Appeals  
for the Ninth Circuit**

---

JAMES TAYLOR YOKELY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

**Transcript of Record**

---

**Appeal from the District Court  
for the District of Alaska,  
Third Division**





## INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Attorneys, Names and Addresses of . . . . .	1
Clerk's Certificate, Dated June 24, 1955 . . . . .	421
Clerk's Certificate, Dated September 6, 1955 . . . . .	423
Defendant's Proposed Instruction No. 1 . . . . .	6
Defendant's Proposed Instruction No. 2 . . . . .	7
Defendant's Proposed Instruction No. 3 . . . . .	8
Indictment . . . . .	3
Instructions to the Jury . . . . .	8
Judgment, Sentence and Commitment . . . . .	35
Memorandum Opinion . . . . .	41
Minute Order February 7, 1955—Motion for New Trial Denied . . . . .	37
Motion for Judgment of Acquittal and New Trial . . . . .	33
Notice of Appeal . . . . .	38
Order Extending Time to Renew Motion . . . . .	35
Plea of Not Guilty . . . . .	6
Statement of Points . . . . .	425
Transcript of Proceedings . . . . .	43

## Witnesses, Defendant's:

Burge, Richard W.

—direct .....	128, 321
—cross .....	140, 327
—redirect .....	329

Dungee, Albert L.

—direct .....	363
—cross .....	367
—redirect .....	369
—recross .....	370

LaCour, Gilbert

—direct .....	331
—cross .....	335

Yokely, James Taylor

—direct .....	338
—cross .....	350

Yokely, William Kirby

—direct .....	313
—cross .....	314
—redirect .....	316
—recross .....	317

## Witnesses, Plaintiff's:

Baker, Forbes D.

—direct .....	245
—cross .....	251

## Witnesses, Plaintiff's—(Continued):

Briggs, Maurice L.

—direct ..... 236

—cross ..... 242

Buckles, Gilbert R.

—direct ..... 303

Disney, Clarence

—direct ..... 262

—cross ..... 274

Dungee, Albert J.

—direct ..... 152

—cross ..... 158

Fitzgerald, James

—direct .....110, 384

—cross .....111, 116, 385

Hartlieb, Gordon L.

—direct .....117, 373

—cross .....118, 374

Johnson, Olaf

—direct ..... 308

Martin, Doyne K.

—direct ..... 291

—cross .....298, 300

## Witnesses, Plaintiff's—(Continued):

## McLaughlin, George M.

—direct .....	120, 379
—cross .....	122, 124, 381
—redirect .....	382

## Pass, Theodore E.

—direct .....	395
—cross .....	396

## Sachen, Joseph V.

—direct .....	68, 165, 391
—cross .....	95, 100, 177
—redirect .....	232
—recross .....	235

Verdict No. 1.....	31
--------------------	----

Verdict No. 2.....	32
--------------------	----

## NAMES AND ADDRESSES OF ATTORNEYS

DAVIS, RENFREW & HUGHES, By  
JOHN C. HUGHES,

Box 477,

Anchorage, Alaska,

For the Appellant.

WILLIAM T. PLUMMER,

U. S. Attorney;

LYNN W. KIRKLAND,

Asst. U. S. Attorney,

Federal Bldg.,

Anchorage, Alaska,

For the Appellee.



In the District Court for the Territory of Alaska,  
Third Division  
Criminal No. 3122

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES TAYLOR YOKELY and LENA MAE  
WILKINS,

Defendants.

INDICTMENT

Section 371, Title 18 U.S.C.A.

The Grand Jury charges:

Count I.

That on or about the 8th day of April, 1954, at or near Anchorage, Third Judicial Division, Territory of Alaska, James Taylor Yokely and Lena Mae Wilkins did unlawfully and feloniously conspire with one another and together to violate a law of the United States, to wit: Section 2422, Title 18, U.S.C.A., namely, transportation within a possession of the United States a female person on the line of an interstate carrier with the intent and purpose that said person engage in the practice of prostitution and debauchery. The said James Taylor Yokely and Lena Mae Wilkins did agree and plan with one another that the said Lena Mae Wilkins would travel from Anchorage to Fairbanks, Alaska, via Alaska Airlines, with the intent and purpose that the said Lena Mae Wilkins engage in prostitution and debauchery in Fairbanks Alaska.

The following overt acts being committed by the said James Taylor Yokely and Lena Mae Wilkins to effect the object of the conspiracy:

(1) The said James Taylor Yokely did give Thirty-three Dollars (\$33.00) to the said Lena Mae Wilkins to purchase a ticket from Alaska Airlines in order that the said Lena Mae Wilkins travel from Anchorage to Fairbanks, Alaska, for purposes of prostitution at Fairbanks, Alaska.

(2) The said James Taylor Yokely did drive the said Lena Mae Wilkins to the Anchorage International Airport in order that she might board the Alaska Airlines plane to Fairbanks, Alaska, on or about the 9th day of April, 1954.

(3) The said Lena Mae Wilkins did on or about the 9th day of April, 1954, travel to Fairbanks from Anchorage, Alaska, via Alaska Airlines.

#### Count II.

That on about the 13th day of April, 1954, at Fairbanks, Fourth Judicial Division, Territory of Alaska, James Taylor Yokely and Lena Mae Wilkins did conspire with one another and together to violate a law of the United States, to wit: Section 2422, Title 18, U.S.C.A., namely, transportation within a possession of the United States a female person on the line of an interstate carrier with the intent and purpose that said person engage in the practice of prostitution and debauchery. The said James Taylor Yokely and Lena Mae Wilkins did conspire with one another and together that the said Lena Mae Wilkins should travel from Fair-



banks, Alaska, to Kodiak, Third Judicial Division, Territory of Alaska, on the lines of interstate carriers, to wit: Alaska Airlines and Pacific Northern Airlines, with the intent and purpose that the said Lena Mae Wilkins engage in prostitution and debauchery in Kodiak, Alaska.

The following overt acts being committed to effect the object of the conspiracy:

(1) The said James Taylor Yokely did give Seventy-five Dollars (\$75.00) to the said Lena Mae Wilkins to purchase a ticket on Alaska Airlines to Anchorage, Alaska, and a ticket from Anchorage, Alaska, to Kodiak, Alaska, via Pacific Northern Airlines.

(2) That on or about the 13th day of April, 1954, the said Lena Mae Wilkins did travel via said Alaska Airlines from Fairbanks to Anchorage, Alaska, and on the following day the said Lena Mae Wilkins did travel from Anchorage to Kodiak, Alaska, via Pacific Northern Airlines.

A True Bill.

/s/ V. E. SCHAWENGERDT,  
Foreman.

/s/ WILLIAM PLUMMER,  
United States Attorney.

Witnesses examined before the grand jury:

Gordon W. Hartlieb

Lena Mae Wilkins

Harold Duke

[Endorsed]: Filed November 18, 1954.

[Title of District Court and Cause.]

### PLEA OF NOT GUILTY

Now at this time, this cause coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to wit:

Now on this 3rd day of December, 1954, came L. W. Kirkland, Assistant United States Attorney, came also the Defendant, James Taylor Yokely, in custody of the United States Marshal, and represented by his counsel, Seaborn J. Buckalew and said defendant having heretofore and on the 1st day of December, 1954, been duly arraigned, announced to the Court that he is ready to enter his plea herein, is asked by the Court if he is guilty or not guilty of the crime charged against him in the indictment, to wit: Conspiracy, to which defendant says he is not guilty and therefore puts himself upon the Country, and the Assistant United States Attorney, for and in behalf of the Government, does the same, and defendant was remanded to the custody of the United States Marshal.

[Entered]: December 3, 1954.

---

### DEFENDANT'S PROPOSED INSTRUCTION No. 1

The Court instructs you that the out of court statement, Government's Exhibit No. 1, which statement is the statement of Lena Mae Wilkins, a

codefendant, that the facts set out in the statement are not to be considered by you in determining the guilt or innocence of James Taylor Yokely. The facts and circumstances set out in the statement are not competent evidence against James Taylor Yokely and I instruct you to disregard this statement completely in considering and weighing the Government's case against James Taylor Yokely.

Bartlett vs. U. S.,  
166 F 2d 920;

Logan vs. U. S.,  
144 U. S. 263.

Refused.

[Endorsed]: Filed December 30, 1954.

---

DEFENDANT'S PROPOSED  
INSTRUCTION No. 2

The Court instructs you that testimony contained in the out of court statement, if it be false in any material particular, you are to consider and weigh the balance of the statement in view of the fact that a portion of the said statement is false. If you are convinced that a portion of the out of court statement is false, you are to view with caution the balance of the statement. If the statement is false in one particular, the balance of the statement could just as well be false.

Refused.

[Endorsed]: Filed December 30, 1954.

DEFENDANT'S PROPOSED  
INSTRUCTION No. 3

You are further instructed that the proof of overt acts, standing alone, is not sufficient to pass a verdict of guilty. Before you can return a verdict of guilty, you must find that defendants did conspire and plan together to violate the act commonly known as the Mann Act and did, thereafter, execute one or more acts for the purpose of effectuating the prior conspiracy.

Given.

[Endorsed]: Filed December 30, 1954.

---

[Title of District Court and Cause.]

## INSTRUCTIONS TO THE JURY

Ladies and Gentlemen of the Jury:

It now becomes the duty of the Court to instruct you as to the law that will govern you in your deliberations upon and disposition of this case. When you were accepted as jurors, you obligated yourselves by oath to try well and truly the matters at issue between the plaintiff and the defendants in this case, and a true verdict render according to the law and the evidence as given you on the trial. That oath means that you are not to be swayed by passion, sympathy or prejudice, but that your verdict should be the result of your careful consideration of all the evidence in the case. It is equally

your duty to accept and follow the law as given to you in the instructions of the Court, even though you may think that the law should be otherwise. It is the exclusive province of the jury to determine the facts in the case, applying thereto the law as declared to you by the Court in these instructions, and your decision thereon as embodied in your verdict, when arrived at in a regular and legal manner, is final and conclusive upon the Court. Therefore, the greater ultimate responsibility in the trial of the case rests upon you because you are the triers of the facts.

1.

By the indictment in this case the defendants Lena Mae Wilkins and James Taylor Yokely have been charged with the crime of conspiracy to commit an offense against the United States. Count number one of the indictment charges:

“That on or about the 8th day of April, 1954, at or near Anchorage, Third Judicial Division, Territory of Alaska, James Taylor Yokely and Lena Mae Wilkins did unlawfully and feloniously conspire with one another and together to violate a law of the United States, to wit: Section 2422, Title 18, U.S.C.A., namely, transportation within a possession of the United States a female person on the line of an interstate carrier with the intent and purpose that said person engage in the practice of prostitution and debauchery. The said James Taylor Yokely and Lena Mae Wilkins did agree and plan with one another that the said Lena Mae



Wilkins would travel from Anchorage to Fairbanks, Alaska, via Alaska Airlines, with the intent and purpose that the said Lena Mae Wilkins engage in prostitution and bebauchery in Fairbanks, Alaska.”

In charging and establishing the crime of conspiracy it is necessary that an overt act be alleged and proved. The indictment alleges that the following overt acts were committed by the said defendants to effect the object of the conspiracy:

(1) The said James Taylor Yokely did give Thirty-three Dollars (\$33.00) to the said Lena Mae Wilkins to purchase a ticket from Alaska Airlines in order that the said Lena Mae Wilkins travel from Anchorage to Fairbanks, Alaska, for purposes of prostitution at Fairbanks, Alaska.

(2) The said James Taylor Yokely did drive the said Lena Mae Wilkins to the Anchorage International Airport in order that she might board the Alaska Airlines plane to Fairbanks, Alaska, on or about the 9th day of April, 1954.

(3) The said Lena Mae Wilkins did on or about the 9th day of April, 1954, travel to Fairbanks, from Anchorage, Alaska, via Alaska Airlines.

Count Number Two of the Indictment Charges:

“That on or about the 13th day of April, 1954, at Fairbanks, Fourth Judicial Division, Territory of Alaska, James Taylor Yokely and Lena Mae Wilkins did conspire with one another and together to violate a law of the United States, to wit:

Section 2422, Title 18, U.S.C.A., namely, transportation within a possession of the United States a female person on the line of an interstate carrier with the intent and purpose that said person engage in the practice of prostitution and debauchery. The said James Taylor Yokely and Lena Mae Wilkins did conspire with one another and together that the said Lena Mae Wilkins should travel from Fairbanks, Alaska, to Kodiak, Third Judicial Division, Territory of Alaska, on the lines of interstate carriers, to wit: Alaska Airlines and Pacific Northern Airlines, with the intent and purpose that the said Lena Mae Wilkins engage in prostitution and debauchery in Kodiak, Alaska.”

The indictment charges that the following overt acts were committed to effect the object of the conspiracy:

(1) The said James Taylor Yokely did give Seventy-five Dollars (\$75.00) to the said Lena Mae Wilkins to purchase a ticket on Alaska Airlines to Anchorage, Alaska, and a ticket from Anchorage, Alaska, to Kodiak, Alaska, via Pacific Northern Airlines.

(2) That on or about the 13th day of April, 1954, the said Lena Mae Wilkins did travel via said Alaska Airlines from Fairbanks, to Anchorage, Alaska, and on the following day the said Lena Mae Wilkins did travel from Anchorage to Kodiak, Alaska, via Pacific Northern Airlines.

2.

The indictment is brought under the law of the United States which reads as follows:

“If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be \* \* \*”

The relevant provisions of the law of the United States referred to in the indictment, the violation of which is charged by the indictment to have been the object and purpose of the conspiracy, read as follows:

“Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be \* \* \*”

3.

This indictment is a mere allegation of the charge against the defendants and is not, in itself, any evi-



dence of guilt, and no juror should permit himself to be influenced against the defendants because of the fact that an indictment has been returned against the defendants.

To this indictment the defendants have pleaded not guilty, which plea is a denial of the charge, and puts in issue every material allegation of the indictment.

It therefore becomes the duty, and it is incumbent upon the Government to prove every material element of the charge contained in the indictment to your satisfaction beyond a reasonable doubt.

The exact date of the commission of the crime charged in the indictment is not material, provided the crime was committed within three years prior to the date of the indictment. It is sufficient if you find the crime so charged was committed on any date within three years prior to the date of the indictment.

The law presumes every person charged with crime to be innocent. This presumption of innocence remains with the defendants throughout the trial and should be given effect by you unless and until, by the evidence introduced before you, you are convinced the defendants are guilty beyond a reasonable doubt.

This rule, as to the presumption of innocence, is a humane provision of the law, intended to guard against the conviction of an innocent person, but it is not intended to prevent the conviction of any per-

son who is in fact guilty or to aid the guilty to escape punishment.

## 4.

The essential elements which the government must prove to warrant conviction of the defendants of the crime charged in the first count of the indictment are:

First, that on or about the 18th day of April, 1954, at or near Anchorage, Third Judicial Division, Territory of Alaska, the defendants did unlawfully and feloniously enter into a criminal combination, or conspiracy, in effect agreed between themselves that defendant Lena Mae Wilkins would travel from Anchorage to Fairbanks, Alaska, via Alaska Airlines, with intent and purpose that the said Lena Mae Wilkins would engage in prostitution and debauchery in Fairbanks, Alaska; and that thereafter the defendants, in pursuance and furtherance of said unlawful conspiracy, and to effect the objects and purposes thereof, committed one or more of the overt acts charged in count one of the indictment, namely:

(1) The said James Taylor Yokely did give Thirty-three dollars (\$33.00) to the said Lena Mae Wilkins to purchase a ticket from Alaska Airlines in order that the said Lena Mae Wilkins travel from Anchorage to Fairbanks, Alaska, for purposes of prostitution at Fairbanks, Alaska; or,

(2) The said James Taylor Yokely did drive the said Lena Mae Wilkins to the Anchorage International Airport in order that she might board the

Alaska Airlines plane to Fairbanks, Alaska, on or about the 9th day of April, 1954; or

(3) The said Lena Mae Wilkins did on or about the 9th day of April, 1954, travel to Fairbanks from Anchorage, Alaska, via Alaska Airlines.

If the government has proved these essential elements of the crime charged in the first count of the indictment to your satisfaction beyond a reasonable doubt, then you should find the defendants guilty of the crime charged in said count one. But if the government has failed to prove any of these essential elements beyond a reasonable doubt, then defendants should be found not guilty of the crime charged in the first count of the indictment.

The essential elements which the government must prove to warrant conviction of the defendants of the crime charged in the second count of the indictment are:

That on or about the 13th day of April, 1954, at Fairbanks, Fourth Judicial Division, Territory of Alaska, the defendants did unlawfully and feloniously enter into a criminal combination, or conspiracy, in effect agreed between themselves that defendant Lena Mae Wilkins would travel from Fairbanks, Alaska, to Kodiak, Third Judicial Division, Territory of Alaska, on the Alaska Airlines and Pacific Northern Airlines, with the intent and purpose that the said Lena Mae Wilkins engage in prostitution and debauchery in Kodiak, Alaska; and that thereafter the defendants, in pursuance and

furtherance, of the unlawful conspiracy, and to effect the objects and purposes thereof, committed one or both of the overt acts charged in count two of the indictment, namely:

(1) The said James Taylor Yokely did give Seventy-five dollars (\$75.00) to the said Lena Mae Wilkins to purchase a ticket on Alaska Airlines to Anchorage, Alaska, and a ticket from Anchorage, Alaska, to Kodiak, Alaska, via Pacific Northern Airlines; or,

(2) That on or about the 13th day of April, 1954, the said Lena Mae Wilkins did travel via said Alaska Airlines from Fairbanks to Anchorage, Alaska, and on the following day the said Lena Mae Wilkins did travel from Anchorage to Kodiak, Alaska, via Pacific Northern Airlines.

If the government has proved these essential elements of the crime charged in the second count of the indictment to your satisfaction beyond a reasonable doubt, then you should find the defendants guilty of the crime charged in said count two. But if the government has failed to prove any of these essential elements beyond a reasonable doubt, then defendants should be found not guilty of the crime charged in the second count of the indictment.

While the commission of one of the overt acts alleged in each count of the indictment must be proved beyond a reasonable doubt and like proof must be made that at least one of such acts alleged in each count was done in pursuance and furtherance of the alleged conspiracy and to effect the ob-

jects and purposes thereof, it is not necessary to allege or prove that any of the overt acts charged is in itself criminal.

You are further instructed that the proof of overt acts, standing alone, is not sufficient to pass a verdict of guilty. Before you can return a verdict of guilty, you must find that defendants did conspire and plan together to violate the act commonly known as the Mann Act and did, thereafter, execute one or more acts for the purpose of effectuating the prior conspiracy.

5.

Upon offer of the government there has been admitted in evidence a written statement signed by the defendant Wilkins, and given by her to a law enforcement official at her own request. That statement is relied upon in part by the government to establish the guilt of the defendant of the crime charged against her.

All such statements containing admissions against interest made by one charged with crime should be carefully scrutinized and received with caution. That rule applies to this statement. Such a statement, when made voluntarily and deliberately and with knowledge and understanding of its contents, may be considered as evidence against the person making it, the same as any other evidence. But if such a statement is made by one in custody under circumstances showing that she was induced to make the same through fear or intimidation or



under circumstances showing that the statement was not freely and voluntarily made, or that the statement was made under circumstances that indicate lack of understanding on the part of the person making such a statement as to the nature and contents thereof, then the statement must not be considered as evidence against the person making it.

Unless you find beyond reasonable doubt that the written statement so made by the defendant was freely and voluntarily made, that it was not made under any sense of fear or made as the result of any intimidation or coercion, or as the result of any promise, and unless you further find that the defendant thoroughly understood the nature of the statement and the contents thereof, and knew that she was under no obligation of any kind to make it, then you must disregard said written statement and not consider the same as any evidence whatever against the defendant. If you find that the defendant made said statement freely and voluntarily and with understanding of its contents, then you may consider such statement precisely as you would any other evidence coming before you, giving to such statement the weight and value you think just and right.

6.

A conspiracy is a combination between two or more persons, by concerted action to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal and unlawful, by criminal and unlawful means. In this case the conspiracy charged in

the indictment is a conspiracy to accomplish a criminal and unlawful purpose.

The word “wilfully” means purposely and intentionally and after some degree of deliberation.

The word “feloniously” means with criminal intent and evil purpose.

An “overt act” is some act which is done to effect the object of the conspiracy as charged in the indictment.

## 7.

A formal written or oral agreement between the defendants is not essential to the formation of a conspiracy to commit the offense charged in the indictment. The conspiracy need not be established by direct evidence of an unlawful agreement but its existence may be shown, in whole or in part, by proof of facts and circumstances, from which the only logical inference is that what was done by the alleged conspirators as shown by the evidence was and must have been done in furtherance of a common purpose or design of the alleged conspirators to commit an offense against the United States as charged. A conspiracy may be continuous and contemplate the commission of several offenses.

But in order to commit the crime of conspiracy charged, it is necessary that the defendants must have agreed to do an unlawful or criminal thing, and that means that the minds of the parties must have met. If there was no meeting of the minds, there was no agreement and, therefore, no resulting conspiracy.

## 8.

Criminal intent is a necessary ingredient of the crime charged in the indictment, and before a verdict of guilty may be rendered you must find from the evidence, beyond a reasonable doubt, that the defendants intended to commit the offense against the United States charged in the indictment.

In this connection you are instructed that every person is presumed to intend the natural consequences of his own voluntary and deliberate acts. One who voluntarily and deliberately performs an act which, from our common experience, is known to produce a particular result, may be presumed to have anticipated and intended that result.

## 9.

The written statement, in the nature of admissions or confessions, made by the defendant Lena Mae Wilkins and admitted in evidence, is to be considered by you with all of the other evidence in the case. The truth or falsity of such statement, or any part thereof, is for your determination. You should consider the same in connection with all other facts and circumstances appearing at the trial, including the circumstances under which the statement was made, and give to the statement such weight as you think just and right.

## 10.

In any criminal case, an accomplice is one who knowingly and voluntarily and in common interest



with the defendant on trial participates in the commission of the crime charged. The testimony of an accomplice ought to be viewed with distrust. A conviction cannot be had upon the testimony of an accomplice, or any number of accomplices, unless he, or they, be corroborated by such other evidence as tends to connect the defendant with the commission of the crime charged, and the corroboration is not sufficient if it merely shows the commission of the crime or the circumstances of the commission thereof.

### 11.

Some of the evidence in this case is of the type called "circumstantial." Circumstantial evidence is of the kind in which proof is given in a certain case of certain facts and circumstances from which the jury may infer other and connected facts which usually and reasonably follow from the facts testified to according to the common experience of mankind. Circumstantial evidence is the inference of a fact in issue which follows as a natural consequence according to reason and common experience from known collateral facts.

There is nothing in the nature of circumstantial evidence which renders it any less reliable than direct evidence.

While circumstantial evidence under appropriate conditions is just as reliable as direct evidence, and while no greater degree of mental conviction is required to find a verdict on circumstantial evidence than on direct evidence, before you are justified in

convicting the defendants upon circumstantial evidence alone, you must be satisfied beyond a reasonable doubt that all of the facts and circumstances taken together as proved, are not only consistent with the inference that the defendants are guilty, but are at the same time inconsistent with any reasonable hypothesis of the defendants' innocence, or with any other rational hypothesis, for mere suspicions, probabilities or suppositions do not warrant a conviction.

All of the evidence in this case, both direct and circumstantial, should be weighed and considered together and as a whole, and if, as a result thereof, you are convinced beyond a reasonable doubt that the defendants are guilty as charged in the indictment, you should return a verdict accordingly; if not, you should acquit.

## 12.

In this case, two defendants have been jointly indicted for the alleged crime of conspiracy. You are instructed that no acts or admissions of either of the defendants done or made out of the presence of the other after the termination of the alleged conspiracy, may be considered by you in determining the guilt or innocence of the other. It is for you to decide from all of the evidence the date of the termination of the alleged conspiracy.

## 13.

A reasonable doubt is a doubt which is reasonable in view of all of the evidence, and such as arises

upon an impartial comparison and consideration of all of it, or from lack of evidence, and prevents the jury from being able candidly and truthfully to say that they have an abiding conviction of the defendant's guilt.

The very use of the word "reasonable" in the term "reasonable doubt" indicates that by a reasonable doubt is not meant any vague, formless, or imaginary doubt or conjecture which may come into your minds, or which may be created out of sympathy for the accused or another, or out of kindness of heart.

A reasonable doubt must be a substantial doubt, such as an honest, sensible, fairminded person, animated by a conscientious desire to ascertain the truth, may with reason entertain.

If, after examining carefully all the facts and circumstances in the case, in the light of the law as stated by the Court, you have a settled and abiding conviction of the guilt of the defendants, then you are satisfied of guilt beyond a reasonable doubt; but if you do not have such a conviction of the defendant's guilt, then you should acquit.

#### 14.

All questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, are to be decided by the Court, and all discussions of law addressed to the

Court; and although every jury has the power to find a general verdict which includes questions of law as well as of fact, you are not to attempt to correct by your verdict what you may believe to be errors of law made by the Court.

All questions of fact—unless so intimately related to matters of law that a determination must be made thereon by the Court as questions of law—must be decided by the jury, and all evidence thereon addressed to them. Since the law places upon the Court the duty of deciding what testimony may be admitted in the trial of the case you should not consider any testimony that may have been offered and rejected by the Court, or admitted and thereafter stricken out by the Court.

You are the sole judges of the credibility of the witnesses. In determining the credit you will give to a witness and the weight and value you will attach to his testimony, you should take into account the conduct and appearance of the witness upon the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying, if any is shown; his relation to and feeling for or against any of the parties to the case; the probability or improbability of the statements of such witness; the opportunity he had to observe and be informed as to matters respecting which he gave evidence before you; and the inclination he evinced, in your judgment, to speak the truth or otherwise as to matters within his knowledge.

## 15.

The law makes you, subject to the limitations of these instructions, the sole judges of the effect and value of evidence addressed to you.

However, your power of judging the effect of evidence is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your mind, against the declarations of witnesses fewer in number, or against a presumption or other evidence satisfying your minds.

A witness wilfully false in one part of his testimony may be distrusted in others.

Testimony of the oral admissions of a party, should be viewed with caution.

Evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict, and therefore, if the weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence was within the power of the party, the evidence offered should be viewed with distrust.

## 16.

Under the laws of Alaska, the accused, at his own request and not otherwise, is deemed a competent



witness, the credit to be given to his testimony being left solely to the jury under the instructions of the Court.

In this case the defendant Yokely has offered himself as a witness and has testified in his own behalf. His credibility and the weight of his testimony should be subjected to the same tests as are applied to other witnesses and to their testimony. In weighing the testimony of the defendant you have the right to take into consideration his interest in the result of the trial, as well as all other factors and circumstances by which the credibility of witnesses and the weight of their testimony are rightly judged.

16a.

Under the laws of Alaska, the accused, at his own request and not otherwise, is deemed a competent witness. In this case the defendant, Lena Mae Wilkins, has not offered herself as a witness or testified in her own behalf. You are instructed that no inference of guilt or innocence is to be drawn from her failure to take the stand.

17.

A witness may be impeached by the character of his testimony, or by evidence affecting his character for truth, honesty or integrity, or by contradictory evidence. A witness may also be impeached by evidence that at other times he has made statements inconsistent with his present testimony as to any matter material to this case; or by proof that he

has been convicted of a crime. However, the impeachment of a witness does not necessarily mean that his testimony is completely deprived of value or that its value is destroyed in any degree. The effect, if any, of the impeachment upon the credibility of the witness is for you to determine.

To “impeach” means to bring or throw discredit on; to call in question; to challenge, to impute some fault or defect to. A witness wilfully false in one part of his testimony may be distrusted in other parts. Discrepancies in a witness’ testimony or between his testimony and that of others, if there were any, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or a transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance. But a wilful falsehood always is a matter of importance and should be seriously considered. Whenever it is possible you will reconcile conflicting or inconsistent testimony, but where it is not possible to do so, you should give credence to that testimony which, under all the facts and circumstances of the case, appeals to you as the most worthy of belief.

### 18.

At the close of the trial, counsel have the right to argue the case to the jury. The arguments of counsel, based upon study and thought, may be,

and usually are, distinctly helpful; however, it should be remembered that arguments of counsel are not evidence and cannot rightly be considered as such. It is your duty to give careful attention to the arguments of counsel, so far as the same are based upon the evidence which you have heard and the proper deductions therefrom, and the law as given to you by the Court in these instructions. But arguments of counsel, if they depart from the facts or from the law, should be disregarded. Counsel, although acting in the best of good faith, may be mistaken in their recollection of testimony given during the trial. You are the ones to finally determine what testimony was given in this case, as well as what conclusions of fact should be drawn therefrom.

19.

The law requires that all twelve jurors must agree upon a verdict before one can be rendered.

While no juror should yield a sincere conclusion, founded upon the law and the evidence of the case, in order to agree with other jurors, every juror, in considering the case with fellow jurors, should lay aside all undue pride or vanity of personal judgment, and should consider differences of opinion, if any arise, in a spirit of fairness and candor, with an honest desire to get at the truth, and with the view of arriving at a just verdict.

No juror should hesitate to change the opinion he has entertained, or even expressed, if honestly convinced that such opinion is erroneous, even



though in so doing he adopts the views and opinions of other jurors. But before a verdict of guilty can be rendered, each of you must be able to say, in answer to your individual conscience, that you have arrived at a settled conviction, based upon the law and the evidence of the case and nothing else, that the defendants are guilty.

## 20.

You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and it is not your province to select one particular instruction and consider it to the exclusion of the other instructions.

As you have been heretofore charged, your duty is to determine the facts from the evidence admitted in the case, and to apply to those facts the law as given to you by the Court in these instructions.

During the trial I have not intended to make any comment on the facts or express any opinion in regard thereto. If, by mischance, I have, or if you think I have, it is your duty to disregard that comment or opinion entirely, because the responsibility for the determination of the facts in this case rests upon you, and upon you alone.

## 21.

When you retire to consider your verdict, you will select one of your number foreman, who will speak for you and date and sign the verdicts unanimously agreed upon. When you so retire you will take with you to the jury room the exhibits, these instructions, and two forms of verdict.

As to defendant Yokely, you will use verdict number one. If you find said defendant guilty of the crime charged in the first count of the indictment, you will draw a line in the blank space before the word "guilty" in paragraph one of that verdict. If you find said defendant Yokely not guilty of the crime charged in the first count of the indictment you will insert the word "not" in the blank space before the word "guilty" in said paragraph one. If you find defendant Yokely guilty of the crime charged in the second count of the indictment, you will draw a line in the blank space before the word "guilty" in paragraph two of that verdict. If you find said defendant not guilty of the crime charged in the second count of the indictment you will insert the word "not" in the blank space before the word "guilty" in said paragraph two.

As to defendant Wilkins, you will use verdict number two. If you find said defendant guilty of the crime charged in the first count of the indictment you will draw a line in the blank space before the word "guilty" in paragraph one of that verdict. If you find the defendant Wilkins not guilty of the crime charged in count one of the indictment, you will insert the word "not" in the blank space before the word "guilty" in said paragraph one. If you find defendant Wilkins guilty of the crime charged in the second count of the indictment, you will draw a line in the blank space before the word "guilty" in paragraph two of said verdict. If you find said

defendant Wilkins not guilty of the crime charged in the second count of the indictment, you will insert the word “not” in the blank space before the word “guilty” in said paragraph two.

It is necessary for you to date, sign, and return into court two forms of verdict, one for each defendant, and also that you make a finding as to each defendant on both counts.

With your verdicts thus unanimously agreed upon, and dated and signed by your foreman, you will return into court the exhibits and these instructions.

Dated at Anchorage, Alaska, this 29th day of December, 1954.

/s/ J. L. McCARREY, JR.,  
District Judge.

[Endorsed]: Filed December 30, 1954,

---

[Title of District Court and Cause.]

No. 3122 Cr.

VERDICT No. 1

We, the jury, duly selected, impanelled, and sworn to try the above-entitled case, do find the defendant James Taylor Yokely . . . . guilty of the crime charged against him in count number one of the indictment;

And we do further find the defendant James Taylor Yokely . . . . guilty of the crime charged against him in count number two of the indictment.

Dated at Anchorage, Alaska, this 29th day of December, 1954.

/s/ JOHN M. ASPLUND,  
Foreman.

[Endorsed]: Filed and entered December 30, 1954.

---

[Title of District Court and Cause.]

No. 3122 Cr.

VERDICT No. 2

We, the jury, duly selected, impanelled, and sworn to try the above-entitled case, do find the defendant Lena Mae Wilkins, . . . . guilty of the crime charged against her in count number one of the indictment;

And we do further find the defendant Lena Mae Wilkins, . . . . guilty of the crime charged against her in count number two of the indictment.

Dated at Anchorage, Alaska, this 29th day of December, 1954.

/s/ JOHN M. ASPLUND,  
Foreman.

[Endorsed]: Filed and entered December 30, 1954.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL  
AND NEW TRIAL

1. The defendant moves the Court for a judgment of acquittal as made at the close of all of the evidence under the provisions of Rule 29b.

2. The defendant moves the Court to grant him a new trial for the following reasons:

a. That the Court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.

b. That the verdict is contrary to the weight of the evidence.

c. That the verdict is not supported by substantial evidence.

d. That the Court erred in giving instruction No. 12 in that the last sentence thereof is tantamount to an instruction of guilt.

e. That the Court erred in charging the jury and in refusing to charge the jury as requested, and particularly the Court erred in refusing to give defendant's proposed instruction No. 1.

f. That the defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

1. The attorney for the government stated in his argument that a defendant, Lena Mae Wilkins,

did not take the stand and urged the jury that "a conspiracy existed and that it still exists" or words to that effect, by inference and innuendo insinuating that the failure of the co-defendant Lena Mae Wilkins to take the stand was an act of conspiracy between the two defendants existing at the time of trial and that the attorney for the government further alluded to the failure of the defendant Lena Mae Wilkins to take the stand in substance as follows: "Why did she not take the stand? What is she hiding?" or words to that effect, by innuendo inferring that the guilt of this defendant was thereby proved or admitted.

g. That the Court erred in denying the defendant's motion for a mistrial.

h. That the Court erred in admitting the government's Exhibit No. 1.

This motion is based on the records and files herein and upon the affidavit of the defendant hereto attached and by reference made a part hereof.

DAVIS, RENFREW &  
HUGHES,

By /s/ JOHN C. HUGHES.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 10, 1955.



[Title of District Court and Cause.]

ORDER

The motion of defendant, by and through his counsel Davis, Renfrew & Hughes, having come on regularly to be heard and for good cause shown therefrom,

It Is Hereby Ordered that the defendant shall have until and including the 11th day of January, 1955, within which to renew motion for judgment of acquittal or in the alternative a new trial.

Dated: January 5th, 1955.

/s/ J. L. McCARREY, JR.,  
District Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed and entered January 5, 1955.

---

In the District Court for the Territory of Alaska,  
Third Division  
Criminal No. 3122

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

JAMES TAYLOR YOKELY and LENA MAE  
WILKINS,  
Defendants.

JUDGMENT, SENTENCE AND COMMITMENT

On the 30th day of December, 1954, came Lynn W. Kirland, Assistant United States Attorney, the



attorney for the government, and the defendants, James Taylor Yokely and Lena Mae Wilkins, appeared in person and by their counsel, Seaborn J. Buckalew, Esquire, and John Dunn, Esquire, respectively.

It Is Adjudged that the defendants have been convicted upon their plea of not guilty and a verdict of guilty of the offense of conspiracy as charged in Count I and Count II of the Indictment on file herein; and the Court having asked the defendants whether they have anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendants are guilty as charged and convicted.

It Is Adjudged that the defendant, James Taylor Yokely, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) years on each Count, said sentence on Count II to run concurrently with the sentence imposed on Count I, said sentence to commence and begin on the 30th day of December, 1954, and that said defendant stand committed until said sentence is served.

It Is Adjudged that the defendant, Lena Mae Wilkins, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two (2) years on each Count, said sentence on Count II to run concurrently with the sentence imposed on Count I, said

sentence to commence and begin on the 14th day of January, 1955.

It Is Further Ordered that One (1) year of said sentence is suspended until the further order of this Court.

It Is Further Ordered that the Clerk deliver a certified copy of this Judgment, Sentence, and Commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendants.

Done in open Court at Anchorage, Alaska, on the 18th day of January, 1955.

/s/ J. L. McCARREY, JR.,  
District Judge.

[Endorsed]: Filed and entered January 18, 1955.

---

[Title of District Court and Cause.]

HEARING ON MOTION FOR A NEW TRIAL  
AS TO DEFENDANT YOKELY

Now at this time, this cause coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to wit:

Now at this time hearing on motion for new trial as to defendant Yokely, in cause 3122 Cr., entitled United States of America, plaintiff, versus James

Taylor Yokely and Lena Mae Wilkins, defendants, came on regularly before the Court, L. W. Kirkland, Assistant United States Attorney, appearing for and in behalf of the Government.

John C. Hughes appearing for and in behalf of the defendant Yokely. The following proceedings were had to wit:

Argument to the Court was had by John C. Hughes for and in behalf of the defendant Yokely.

Argument to the Court was had by L. W. Kirkland, Assistant United States, Attorney, for and in behalf of the Government.

Argument to the Court was had by John C. Hughes for and in behalf of the Defendant.

Whereupon the Court having heard the arguments of respective counsel and being fully and duly advised in the premises denied motion for new trial.

Entered February 7, 1955.

---

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Comes now James Taylor Yokely, one of the above-named defendants, whose residence is Anchorage, Alaska, and whose mailing address is General Delivery, by and through John C. Hughes of Davis, Renfrew & Hughes, one of his attorneys, whose mailing address is P. O. Box 477, Loussac-Sogn Building, Anchorage, Alaska, and hereby gives

notice of appeal to the United States Court of Appeals for the Ninth Circuit from that certain judgment of conviction and sentence entered in the above-entitled matter by the District Court for the Territory (District) of Alaska, Third Division, on the 18th day of January, 1955, by the Honorable J. L. McCarrey, Jr., District Judge, pursuant to a verdict of the jury given on the 30th day of December, 1954, following which verdict the jury was on the same day discharged.

The sentence entered under such judgment and conviction was that the defendant James Taylor Yokely be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five years on each of said counts, said sentence on the second count to run concurrently with the sentence imposed on the first count, said sentence to commence and begin on the 30th day of December, 1954, and that said defendant stand committed until sentence was served.

That on the 5th day of January, 1955, the Court made and entered an order herein enlarging time within which the defendant might renew his motion for judgment of acquittal or in the alternative a new trial, until the 11th day of January, 1955; that on the 10th day of January, 1955, defendant James Taylor Yokely renewed his motion for a judgment of acquittal and in the alternative a new trial which was denied by the Honorable J. L. McCarrey, Jr., on the 7th day of February, 1955.

The offense charged in the indictment was two counts of conspiracy of James Taylor Yokely and Lena Mae Wilkins with one another to violate a law of the United States of America, to wit: Section 2422, Title 18, USCA, namely, transportation within a possession of the United States of a female person on the line of an interstate carrier with the intent and purpose that said person engage in the practice of prostitution and debauchery.

That the defendant James Taylor Yokely is presently incarcerated in the Federal Jail, Anchorage, Alaska, having made his election not to commence serving sentence.

That at the close of the Government's case defendant moved for a judgment of acquittal on the grounds that as a matter of law from the evidence introduced, the defendant was not guilty of any offense and was entitled to be acquitted of the charge and that such motion was renewed at the close of all evidence and that the Court reserved decision on such motion, as above set forth, and the motion was renewed after the verdict and sentence and was overruled by the Court. That the defendant, at the close of all evidence, likewise moved the Court for a mistrial on the grounds that the District Attorney, in his argument, commented directly on the fact that the co-defendant Lena Mae Wilkins did not take the stand on her own behalf, which motion at the close of the trial was overruled and was further overruled as herein stated upon the motion for acquittal and in the alternative a new trial.



Dated at Anchorage, Alaska, this 10th day of February, 1955.

/s/ JAMES TAYLOR YOKELY,  
Appellant.

DAVIS, RENFREW &  
HUGHES,

By /s/ JOHN C. HUGHES.

Receipt of Copy acknowledged.

[Endorsed]: Filed February 10, 1955.

---

[Title of District Court and Cause.]

### MEMORANDUM OPINION

The above-captioned matter having come on regularly for hearing on the motion of the defendant for admission to bail and the Court having been fully advised in the premises and having heretofore under date of February 21, 1955, entered a minute order denying defendant's motion for admission to bail pending appeal, now makes and enters herein its memorandum opinion as follows:

1. That upon a review of the entire evidence and a review particularly of the arguments of the defendant's counsel that a substantial question of law is involved as to whether or not the Government's Exhibit No. 1 should have been admitted, the Court finds that the said Exhibit No. 1 was

properly admitted and that there is no substantial question of law involved therein.

2. That the demeanor of the defendant on the witness stand and in consideration of his testimony that he was a gambler and had not been employed in any other gainful occupation other than gambling since 1942 and has been convicted of numerous crimes the Court is of the opinion that the defendant is a poor moral risk and therefore as a second consideration is not entitled to bail pending appeal, the motion of the defendant for admission to bail pending appeal is accordingly denied.

Dated at Anchorage, Alaska, this 8th day of March, 1955.

/s/ J. L. McCARREY, JR.,  
District Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 8, 1955.



In the District Court for the District of Alaska,  
Third Division

No. Cr. 3122

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES TAYLOR YOKELY and LENA MAE  
WILKINS,

Defendants.

TRANSCRIPT OF PROCEEDINGS

Before: The Honorable J. L. McCarrey, Jr., U. S.  
District Judge.

Appearances:

For the Plaintiff:

WILLIAM T. PLUMMER,

U. S. Attorney;

LYNN W. KIRKLAND,

Assistant U. S. Attorney.

For the Defendant, James Taylor Yokely:

SEABORN J. BUCKALEW, JR.,

Attorney at Law.

For the Defendant, Lena Mae Wilkins:

JOHN C. DUNN,

Attorney at Law.

## Proceedings

The Court: Mr. Kirkland, is the Government ready to proceed with the case of United States of America, plaintiff, vs. James Taylor Yokely and Lena Mae Wilkins, defendants?

Mr. Kirkland: That is correct, your Honor.

The Court: Mr. Dunn, you represent the defendant, Lena Mae Wilkins. Are you ready to proceed at this time?

Mr. Dunn: Yes, your Honor, I am.

The Court: Is Mr. Yokely in the audience?

Mr. Kirkland: He and Mr. Buckalew just stepped out.

The Court: Very well.

(Thereupon, the defendant, James Taylor Yokely and his attorney, Mr. Buckalew, entered the courtroom.)

The Court: Mr. Yokely, are you ready to proceed at this time?

Mr. Yokely: Well, your Honor, I don't have an attorney to represent me at present.

The Court: Ladies and gentlemen of the jury, the court will go in recess for a few minutes. I would ask all counsel and the court reporter, including the clerk, to come into chambers, please.

(Thereupon, at 10:06 o'clock a.m. court went in recess at which time a pre-trial conference was had in the Judge's Chambers as follows): [4\*]

---

\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Court: Let the record show this is a continuation of the court proceedings in the Judge's Chambers in order to be out of the hearing of the jurors, and at this time the court calls upon Mr. Yokely to explain why he doesn't have legal counsel this morning. I would like to let the record reflect that some two weeks ago Mr. Yokely was advised that the case would come on for trial at this date and a day or two afterwards, at his behest, he came into court and a proceedings was had for a continuance. Also, his counsel at that time, Mr. Seaborn J. Buckalew, requested a continuance because he and his counsel had not worked out a proper financial agreement among themselves and at that time in court Mr. Yokely and Mr. Buckalew assured the court that it would be satisfactory to proceed on the day set down for trial since they had tentatively agreed upon an arrangement. Now, last Friday, as I recall, the record will reveal that a motion was filed by Mr. Buckalew at the request of you, Mr. Yokely, advising the court that Mr. Buckalew no longer represented you and you made no request for continuance at that time. The court called Mr. Buckalew this morning and asked him to be in court in order that we could have an explanation as to what happened in respect thereto. Now, can you explain to the court why it is that you do not have counsel ready to proceed with the trial this morning?

Mr. Yokely: Well, your Honor, Friday, Mr. Buckalew and I had a little disagreement about my case and I asked him if he would mind giving me a

release and he did and I left his office [5] and went to several other attorneys and tried to get one. I explained to them that my trial was coming up Monday and they all thought that it wouldn't be fair to them nor to me if they would take my case without having proper time to defend me, and I just couldn't get one.

The Court: What right do you feel you have now at this late date to discharge the attorney and expect the court to grant you a continuance?

Mr. Yokely: I am not asking for a continuance. I am just asking for a little fairness. I tried to have an attorney to represent me, but none of them would take my case under such short notice. I am not trying to evade from going to court.

The Court: But you discharged Mr. Buckalew——

Mr. Yokely: No, I left right out of Mr. Buckalew's office trying to get me an attorney.

The Court: I realize that, but you knew that any attorney likely would come in with that position because of the fact that there wasn't sufficient time.

Mr. Yokely: I wasn't aware of that.

The Court: Well, the court feels at this time that the trial should proceed and that the court plans on appointing Mr. Buckalew as your attorney because he knows the facts and do you have any other counsel that you want to have in there with him?

Mr. Yokely: The court plans to——

The Court: If you can't work out something then the [6] court is going to have to appoint Mr.

Buckalew to go to trial anyway. He is the only one that knows the case and is prepared to go to trial, in part only.

Mr. Yokely: Whether I want him to represent me or not?

The Court: That is right. You can't flaunt justice.

Mr. Yokely: I am not trying to.

The Court: With the type of action you have indicated towards the court—you knew as well as anybody that if you should fire him Friday that would be good grounds possibly for you to get a continuance.

Mr. Yokely: I am not that well up on the law. If I was I probably wouldn't have done that.

The Court: Well, but——

Mr. Yokely: I didn't have that in my mind.

The Court: You have known for 2 weeks or more this was coming up for trial at this time.

Mr. Yokely: I was scheduled for the 16th.

The Court: Now, it is the 20th and we are not ready to go to trial.

Mr. Yokely: And I didn't release him on the 16th. If I had had that in mind it looks like I would have released him before the 16th when I was scheduled.

The Court: Regardless of what it looks like it is up for trial now and you are not prepared to go to trial because you don't have counsel. [7]

Mr. Yokely: I don't want you to think I had that in mind. I am not scheming anything. I am just trying to defend myself as much as possible.



The Court: Well, that is why the court is——

Mr. Yokely: I think I am due that much consideration.

The Court: That is why the court has given you 2 weeks notice, to get yourself squared away on that basis.

Mr. Yokely: I think 2 weeks is awfully short notice. I haven't had near as much consideration as other people.

The Court: I point out to you that you have been in jail for about 90 days, have you not?

Mr. Yokely: Yes, sir.

The Court: And also the indictment was returned——

Mr. Yokely: Secret indictment was returned on me.

The Court: ——on the 18th day of November, it was published.

Mr. Yokely: Beg your pardon.

The Court: It was published on the 18th day of November. So you had more than a month. Where do you feel you haven't had the proper notice?

Mr. Yokely: I don't think I got the secret indictment before it was returned or until about the last of November.

The Court: Well, even so then you have had 3 weeks in December. The District Attorney's office has the right to determine which cases they want to try. That is their prerogative. [8] I didn't set this case at my request. It was set down at the request of the District Attorney.



Mr. Yokely: All the other cases that came up behind me I see they are on the calendar for February and May and everything. I am a taxpayer here and I feel I do as much as the other people.

The Court: Excepting this, Mr. Yokely, I point to you, as I just did a moment ago, that the District Attorney determines when these cases will be tried.

Mr. Yokely: For what reason?

The Court: Because it is their right.

Mr. Yokely: That they push me like that?

The Court: It is their right.

Mr. Yokely: I don't have time to try to defend myself at all. I have been in a whirlwind ever since I have been out, everything has just been pushed on me.

The Court: Well, I point out to you, you admit yourself that you have known for 3 weeks——

Mr. Yokely: I only got out of custody the 7th, your Honor.

The Court: Yes. Well, that is over 2 weeks, about 2 now.

Mr. Yokely: Do you feel that is proper time for me to try to defend myself when the Government has had a hundred or more days trying to build up a case on me and I am going to have 2 [9] weeks to try to defend myself?

The Court: I point out to you there are many defendants that go to trial and never get outside of jail.

Mr. Yokely: I wasn't even notified until 3 weeks ago.

The Court: Well, the court feels that I haven't any choice——

Mr. Yokely: I have a right to try to defend myself.

The Court: You have had, as you say yourself, you have known about this for 3 weeks. You were in jail for a period of time. You knew why you were in jail.

Mr. Yokely: Yes, sir, that is true.

The Court: You have been notified by the court for over 2 weeks that the case was coming up for the 16th.

Mr. Yokely: And I had me an attorney.

The Court: Now, are you taking the position that because you couldn't go to trial on the 16th you can't go to trial on the 20th?

Mr. Yokely: No, just something came up that me and Mr. Buckalew disagree on and I asked him to release me. I didn't have this on my mind, trying to get a continuance then. I was all set to go to court on the 16th.

Mr. Buckalew: Your Honor, I think Mr. Dunn can probably verify that because he worked with me for about 4 days. He could probably see trouble coming up between my client and myself. [10]

Mr. Dunn: That is right, your Honor. The defense that I had prepared for the defendant Wilkins was prepared jointly with Mr. Buckalew. We felt the cases were so closely tied together it was necessary we cooperate and it was just right up to the last, I think it was Friday—I believe Mr.

Yokely discharged Mr. Buckalew Thursday, if I am not mistaken.

Mr. Yokely: Friday, wasn't it?

Mr. Buckalew: He discharged me Friday morning.

Mr. Dunn: Than I learned right after that—it would be the 17th I think—and it is true that Mr. Yokely was preparing with Mr. Buckalew. I know that of my own personal knowledge and so was Wilkins preparing with Buckalew in that Buckalew and I were cooperating with each other.

The Court: Well, Mr. Kirkland, what position do you take?

Mr. Kirkland: We are prepared to go to trial, your Honor. That is the only position I can take.

Mr. Plummer: We have witnesses subpoenaed and some of them have been here since Saturday.

The Court: That is the position the court takes. The defendant cannot defeat the ends of justice——

Mr. Yokely: I am not trying to defeat the ends of justice.

The Court: Just hear me out, please. By not being prepared to go to trial when the court feels you have had sufficient [11] notice.

Mr. Buckalew: Your Honor, I think the court probably ought to inquire of the Government's attitude. I don't know—Mr. Yokely says he doesn't want me under any circumstances and it is a question of ethics, and it is a very serious question in my mind as to whether the Government is going through a useless act of having a trial this morning.

Mr. Kirkland: I don't know if Mr. Buckalew could represent him or not.

Mr. Buckalew: Suppose he doesn't talk to me during the trial and he doesn't want me now.

Mr. Dunn: You see, that puts me in a bad spot, too, your Honor, because if you appoint Mr. Buckalew and Yokely won't cooperate with Buckalew it makes it impossible for Buckalew to cooperate with me.

The Court: Yes. In that respect, Mr. Dunn, the court feels that you should have some consideration and if Mr. Yokely intends to urge upon the court that he doesn't want Mr. Buckalew in any way, shape or form then I think what the court will have to do is appoint you to assist Mr. Yokely, because you are court-appointed, too, as well as Mr. Buckalew. The court is not going to grant a continuance. I will tell you that now, Mr. Yokely, so you just make up your mind as to what position you want to take on it.

Mr. Dunn: Your Honor, if I may interrupt a second. [12] I don't want to tie Mr. Buckalew to help me. That is very generous, but I know his time is valuable and it is not necessary that he help me with Wilkins. It would have been a great aid had he helped me with Wilkins by representing Yokely because that is the way our prior defense was planned. He is certainly welcome to aid, but I don't think it is—I imagine he prefers not to. I don't know.

The Court: The court has expressed his opinion. Mr. Yokely, where do you stand?

Mr. Yokely: Your Honor, you understand I am facing a serious charge and that is the same thing I was telling you about, going to court and giving me so short notice of that. A man can't make up a decision like that just right off.

The Court: All right. Then we will give you 10 minutes to think it out.

Mr. Yokely: 10 minutes?

The Court: Yes.

Mr. Buckalew: Your Honor, I would like to say one more thing. I don't want to delay this trial at all and I think the record should show that I advised Mr. Yokely when he wanted a release that I was prepared and willing to go to trial, but it was up to him. I made an appearance even though certain financial arrangements were not handled. I told him that had nothing to do with it. I was his attorney of record and prepared to go to trial. Mr. Yokely then told me that my analysis of the case and [13] what he thought should be done were so different that he didn't have any confidence in my analysis of this particular case, and for that reason he released me.

The Court: I point out to you Mr. Yokely chose you, you didn't choose him.

Mr. Buckalew: I just hate, your Honor, to go into court and represent somebody that doesn't want me.

The Court: That is true, too, but we can't have people flaunting their own, shall we say, lawless attitude toward our judicial process at the court.



Mr. Buckalew: I don't think it is that, your Honor.

The Court: Not you. I am not referring to you, but Mr. Yokely.

Mr. Buckalew: Even Mr. Yokely in this situation because I don't think that he had it in his mind if he did create an argument with me and then force the court to appoint another attorney and in the course of the argument get a continuance.

The Court: Excepting this, he know the case was set for trial and knew when he fired you he had to get another counsel and he knew at that time it would take a little time to prepare for the trial of the case, so his motive looks bad on the record. You can't get away from it.

Mr. Yokely: I didn't have that in mind.

The Court: We are having this in Chambers because the jurors are the ones to find you guilty or not guilty so the [14] record need not be reflected to the jurors at all.

Mr. Buckalew: I should point out one thing to his honor, that the court probably should consider and that is, that Mr. Yokely couldn't under any circumstances file an oath he was a pauper. I mean, he has a Buick automobile, an equity in it, and some property that is mortgaged and I advised him that he would be committing another crime and he was in enough trouble without going into court and signing another oath.

The Court: Yes, I recall you called it to the court's attention at that time. At that time the court was considering appointing you at his behest



and then you advised the court, which the court appreciated. Well, the court will give you a few minutes to make up your mind as to what you want to do about the situation. I feel this is a situation which has been created by your own deliberate acts. Whether you did it intentionally or not, I don't know, I can't say, I am not here to pass on it, but because you don't have counsel at this time is no fault of the court.

Mr. Yokely: Is it your idea I did it intentionally?

The Court: I don't know, but the fact still remains that you at this time are not prepared to go to trial and why you are not ready to go to trial is because of your own decision and that is no fault of the court or the judicial system. It is your own fault.

Mr. Yokely: It is not my own decision. It is the [15] attorneys' decisions. I tried to get one, but they wouldn't take my case under such short notice.

The Court: But I point out to you, Mr. Yokely, it was your decision to get rid of Mr. Buckalew.

Mr. Yokely: That is right.

The Court: You made that decision yourself knowing full well this was set down for the 16th or to follow the case that was being tried at that time. Now the court will excuse you to think it over and make a determination, but you want to do something about it by 10:45. That gives you 20 minutes.

Mr. Buckalew: Just one second, your Honor. What is my position at this stage of the proceedings?

The Court: I would appreciate it very much if

you could stand by until that period of time and since you are familiar with the case, if Mr. Yokely isn't able to hire somebody else, the court feels he will have to appoint you.

Mr. Yokeley: I am able to hire someone else, but they wouldn't take my case, your Honor.

The Court: That is no fault of the court though, Mr. Yokely. How can I be at fault in that respect?

Mr. Yokely: Well, your Honor, am I not entitled to rights like other people?

The Court: You have been entitled to your rights. You have had 90 days.

Mr. Yokely: 90 days, your Honor? I didn't even know [16] about this case 90 days ago. That is the third time you have brought this up and you may be misled, but I didn't know anything about it in those 90 days. I was in jail. I only got the indictment the last of November.

The Court: All right.

Mr. Yokely: I didn't—

The Court: Let's assume what you say is true. You will admit you have known it 21 days, have you not?

Mr. Yokely: Yes, 21 days.

The Court: All right, under the circumstances the court feels that is sufficient.

Mr. Yokely: And I haven't been out 2 weeks, only 12 days.

The Court: That is no fault of the court.

Mr. Yokely: I couldn't do anything while I was in custody.

The Court: That is no fault of the court. I point

out to you that you have property here in town and you certainly should have been able to get out on bond. You have had 2 weeks since you have been out on bond.

Mr. Yokely: I couldn't get out on bond until my time was up, Your Honor.

The Court: You have been out for 2 weeks, have you not?

Mr. Yokely: Yes. [17]

The Court: All right. You feel that isn't sufficient time in which to prepare the case.

Mr. Yokely: I have to get an attorney and try to get money to hire an attorney. It takes 4 or 5 days.

The Court: Then when you get an attorney and he is all prepared then you fire him. I don't want to discuss it any further. You can go back into court at 10:45.

(Whereupon, at 10:28 o'clock a.m. the proceedings in Chambers were completed and at 11:00 o'clock a.m., court reconvenes, and the following proceedings were had:)

The Court: Mr. Buckalew, can you advise the court at this time what position you take with reference to the representation of Mr. Yokely?

Mr. Buckalew: May I approach the bench, your Honor?

The Court: You may.

(Thereupon, all counsel approached the bench along with the court reporter and the

following proceedings were had out of the hearing of the jury:)

Mr. Buckalew: Your Honor, I advised Mr. Yokely that he had one of two choices: He could go to trial without counsel, or perhaps have the court appoint me, or he could insist I go to trial on it and my client has elected that would probably be better than no counsel at all. [18]

The Court: Well, I point out to you, counselor, the law Clerk has gone into it and it is the opinion of the court at this time, based upon the law she has been able to find for me, that the court has the right to force him to trial even without counsel.

Mr. Buckalew: That was my opinion of the law.

The Court: That being the case then, and the position the court would take, would you please announce you do represent him from the table then?

Mr. Buckalew: Am I appointed?

The Court: What is your pleasure?

Mr. Buckalew: All right, I will take it, your Honor.

The Court: Very well. Now, under those circumstances, he will not have to sign a Pauper's Oath because he said he is not qualified to do so, which means——

Mr. Buckalew: If he ever gives me any money I will pay \$150.00 back into court.

The Court: Fair enough then.

(Thereupon, the court reporter and all counsel returned to their respective seats and the

following proceedings were had in the presence of the jury:)

The Court: At this time the court appoints Mr. Buckalew to represent Mr. Yokely and would you please draw 12 names and have them come forward. [19]

(Whereupon, the deputy clerk proceeded to draw from the trial jury box, one at a time, the names of the members of the regular jury panel of petit jurors until the jury of twelve jurors was complete. Before completion of the preemptory challenges, the court adjourned at 4:48 o'clock p.m., December 20, 1954, to the next morning, this case to be resumed at 9:30 o'clock a.m., December 21, 1954.) [20]

(Court is convened at 9:30 o'clock a.m., December 21, 1954, at which time the selection of the trial jury continued until the jury of twelve jurors was complete. Whereupon, said jury was duly sworn to well and truly try the cause and a true verdict render in accordance with the evidence and the instructions of the court.)

The Court: Can Counsel come back at 1:30 o'clock?

Mr. Buckalew: We can, your Honor.

The Court: Very well.

Mr. Kirkland: Yes, your Honor.

The Court: Very well. Ladies and gentlemen of the jury, you are now excused to report back at 1:30. Now that you are impaneled I must instruct



you not to discuss this case among yourselves nor to permit others to discuss it with you. The court will remain in recess until the call of the gavel.

(Whereupon, at 12:00 o'clock noon the court continues the cause to 1:30 p.m. of the same day.)

(At 1:30 o'clock p.m., all counsel beeing present, the trial of said cause was resumed:)

The Court: Mr. Kirkland, you may make your opening statement.

Mr. Kirkland: Mr. Buckalew, Mr. Dunn, Judge McCarrey, [22] and ladies and gentlemen of the jury: The Grand Jury in this case has returned an indictment of two counts charging the defendants, Lena Mae Wilkins and James Taylor Yokely for the crime of conspiracy or conspiring to violate a law of the United States. Now, the first count of this indictment charges that on or about the 8th day of April at Anchorage, Alaska, the defendant, James Taylor Yokely and the defendant, Lena Mae Wilkins, agreed together or conspired together and planned that she would travel from Anchorage to Fairbanks. That upon her arrival in Fairbanks she would engage in the practice of prostitution. And the indictment further sets forth overt acts that the defendants committed together.

The first overt act mentioned in the indictment under Count I, after they had entered into the agreement to commit this crime, they did acts afterwards, and the first one alleged is that James Taylor Yokely did give the sum of \$33.00 to Lena Mae



Wilkins to purchase her ticket from here to Fairbanks. And it sets forth further that James Taylor Yokely drove her out to the International Airport. The indictment goes further, for the third act alleged, that the defendant, Lena Mae Wilkins, did travel to Fairbanks.

Now, the court will instruct you that it will only be necessary to prove one of those 3 acts, but the government will prove all of them to your satisfaction and probably more.

Now, the second count charges that the 2 defendants [23] conspired together with one another, that is, agreed, that the defendant, Lena Mae Wilkins, would travel from Fairbanks down to Kodiak and upon arriving at Kodiak she would conduct herself as a prostitute. The indictment charges the manner in which they had agreed and so forth, how she was to travel, and all of that. Now, the overt acts alleged under that one are as follows: (1) That James Taylor Yokely did give a sum of money to Lena Mae Wilkins to make this trip. It says the sum of \$75.00 to purchase a ticket on Alaska Airlines to Anchorage and then from Anchorage to Kodiak via Pacific Northern Airlines. (2) That on or about the 13th day of April—the court will, of course, instruct you as to time. There may be a variation of time element of a few days in this—charging that Lena Mae Wilkins did travel from Fairbanks to Anchorage via Alaska Airlines. Then on the following day that she traveled from Anchorage to Kodiak via Pacific Northern Airlines.

Now, I know this is the first case of this nature

that you have seen or heard of this particular situation and in order that you might follow the evidence and understand it as it is presented to you, the Government is going to offer and introduce into evidence the sworn statement, before the United States Commissioner here at Anchorage, of the defendant, Lena Mae Wilkins. In her statement every bit of this is set forth and many more things——

Mr. Dunn: Your Honor, I hate to interrupt counsel when he is addressing the jury. I know that normally that is improper, [24] but counsel should not comment on the contents of any statement that is to be offered in evidence until the admissibility of that statement has been established. I don't think there can be any question on it.

The Court: Objection sustained.

Mr. Kirkland: Very well. The Government will offer testimony from competent witnesses that this defendant, Lena Mae Wilkins, did everything that is alleged, along with the defendant, James Taylor Yokely, and the various other things which she made in a statement and there will be testimony to that effect. And right down the line this statement will be corroborated as to the various details, even down to telegrams that are signed. And there will, of course, be other evidence introduced to you from other witnesses.

I don't think that it will now be necessary that I prove she is a prostitute. I believe counsel has stipulated to that fact, or at least has admitted it to the jury.

We will offer evidence, in corroboration of this testimony, that the defendant did board the airlines as charged that she did. That she did go to the various places as charged. That she went there with the intent to engage in prostitution and that she sent money, as a result of this, to her co-defendant and co-conspirator, the one who entered into this agreement with her, James Taylor Yokely.

I am confident that if you listen to this evidence closely [25] that you will return a verdict of guilty as charged in a very short time. Thank you.

The Court: Very well. Counsel for the defendants may make their opening statements. I don't know who desires to speak first.

Mr. Buckalew: If it please the court, Mr. Plummer, Mr. Kirkland, and ladies and gentlemen of the jury: His Honor has appointed me to defend the defendant, James Taylor Yokely. This is my client.

Mr. Kirkland: Your Honor, I object to counsel's comment on being appointed or at least the record should show that he has been representing this defendant all along as a result of a financial agreement.

The Court: In that respect the objection is overruled. Counsel may refer to that.

Mr. Buckalew: His Honor appointed me to defend this man. The defense will prove, I think beyond a reasonable doubt, that the only crime James Taylor Yokely committed was the fact that he owns a piece of property down in East Chester area. The evidence will show that Mrs. Wilkins rented a room in Mr. Yokely's house from Mr. Yokely's brother

and she lived there in Mr. Yokely's house. The evidence will show that Mr. Yokely's wife was gone.

We will show that Mrs. Wilkins got just a little sweet on James Taylor Yokely and that James Taylor Yokely didn't return her affections as she thought he should. That the fact that her [26] feeling for Mr. Yokely wasn't returned she began to get bitter and she really got bitter, so one day she took on a heavy load of scotch and when she got all this scotch in her system she decided she was really going to throw the book to James Taylor Yokely. She did. The only thing is she made a mistake.

Mr. Kirkland: Excuse me, your Honor. He is not supposed to argue the case at this time.

The Court: That is true. Counsel is not supposed to argue. On the other hand, counsel, I think is commenting upon what the evidence will show—that she did get drunk and that she was going to get after Mr. Yokely. Now, you may proceed from that point.

Mr. Buckalew: The evidence will show that she indicated to James Taylor Yokely that she was going to throw the book to him and the evidence will show that James Taylor Yokely told her, "You can't do anything to me. I haven't done anything. Talk to anybody you want to." So we have this situation: The woman is intoxicated; she has thought about getting James Taylor Yokely; she figured, "If I can't have him, nobody else can. I will send him to McNeil Island," and that is the way this whole business got started.

Now, I am going to put Mr. Yokely on the stand

and Mr. Yokely is going to deny that he conspired with Lena Mae Wilkins to do anything. He is going to deny that she was sent to Fairbanks and to Kodiak under his control. He is going to deny that he conspired [27] with her to do anything. He is going to get on the stand and tell you that if she went to Fairbanks she went up there on her own.

Mr. Kirkland: Counsel has stated he is going to deny it. This is not the time for final argument. He may state what his defense is going to be, but not argue the case.

The Court: I think counsel has gone too far, Mr. Buckalew, in arguing.

Mr. Buckalew: I am sorry, your Honor.

The Court: Therefore, the objection will be sustained.

Mr. Buckalew: I have one other thing that I want to advise the jury. I don't think that Mr. Yokely is an all-American citizen. I think that he has done things that he probably shouldn't have done and all that will probably come out in the course of the trial, but there is one thing that I believe, when you hear the evidence on this particular charge that this man conspired with this woman to turn her out as a prostitute in Fairbanks and Kodiak, I think you will find there is no basis in fact for the indictment that was returned against this man. Thank you.

The Court: Very well. Mr. Dunn.

Mr. Dunn: If it please the court, Mr. Kirkland, Mr. Plummer, Mr. Buckalew, and ladies and gentlemen of the jury: I rather imagine that from the



questions I asked you people in choosing you to sit on this jury that you got the impression that [28] I felt like I had a pretty hard case on my hands. I do. I take a great deal of consolation, however, in my belief in the fairness of the American Judicial System and in the fair mindedness of a jury.

Now, Mr. Kirkland said that I had practically stipulated or admitted that my client is a prostitute. I don't know whether he intends to prove that or not. I can't disprove it. I can only rely on your fair mindedness. I think that what I will be able to prove and hence the reason for my questions to you concerning the responsibility of a drunk person as compared with a sober person is that the defendant, Lena Mae Wilkins, was drunk to the point of incompetency at the time a lot of this evidence, that Mr. Kirkland says he is going to use to prove all of these things, was obtained. I think I will be able to show you that as a result of her condition that the statement Mr. Kirkland referred to was given involuntarily. I think I will be able to show you that this woman was not capable of giving a voluntary statement at that time. I hope you will be on guard against evidence coming in the back door if it is held inadmissible at the front door.

There is no doubt in my mind but what the prosecution will be able to prove that the defendant, Lena Mae Wilkins, did on or about the time set forth in the indictment travel between the points mentioned. There is a serious doubt in my mind and I think you will probably end up with the same



doubt in your mind, [29] as to whether or not that traveling was a result of a conspiracy—a conspiracy which took place prior to the actual traveling which is the point in issue here, not whether or not she did in fact travel. I am going to keep a great deal of my evidence in front of you at all times.

If for any reason any of you were watching me awhile ago, just before we renewed the trial of this case, you may have noticed that I asked Mrs. Wilkins to sit at the end of the table, rather than to sit beside me. The reason I did that is that I want you people to observe her throughout the trial. I am not going to put her on the stand and if you watch her I think you will see why I am not going to put her on the stand. She would not be a very good witness. She is scared and——

Mr. Kirkland: If counsel is going to comment as why the defendant doesn't take the stand the Government is entitled to the same right to come back and comment as to their contentions as to why the defendant is not going to take the stand.

The Court: That is correct, counselor. You were proper when you stated that you did not plan to put her on the stand, but any comment beyond that, I think, is highly improper in an opening statement. It is argumentative and may be argued at the conclusion of the trial.

Mr. Dunn: I will renew it then.

Mr. Kirkland: I would have to object at that time if counsel argues at the end of the trial as to why. Then I have [30] every right, under the law,

to come in and argue from my viewpoint as to why the defendant didn't take the stand.

The Court: That is true. We will cross that bridge when we come to it, counselor.

Mr. Dunn: That is what I was hoping, your Honor. I don't see any point in dwelling at great length on an opening statement. You will see the evidence. I have spent enough time with you to believe that each of you will consider it fairly. Thank you.

The Court: Very well. You may call your first witness, Mr. Kirkland.

Mr. Kirkland: Call Mr. Sachen.

### JOSEPH V. SACHEN

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

#### Direct Examination

By Mr. Kirkland:

Q. State your name, please, sir?

A. Joseph V. Sachen, S-a-c-h-e-n.

Q. And your occupation?

A. Special Agent for the Federal Bureau of Investigation.

Q. And during the month of September of 1954 were you so employed? A. Yes, sir [31] .

Q. How long have you been employed as an agent, Mr. Sachen?

A. Approximately 4 years.

Q. When did you come to the Anchorage area?

(Testimony of Joseph V. Sachen.)

A. I came to the Anchorage area about the first of April.

Q. About the first of April. Mr. Sachen, did you have an occasion to interview the defendant, Lena Mae Wilkins, on September 7, 1954?

A. Yes, sir, I did.

Q. And at that time did the defendant make any statement to you?           A. Yes, she did.

Q. Was that statement reduced to writing?

A. Yes, it was.

Q. And after that statement was reduced to writing was the defendant later taken before the United States Commissioner and did the defendant, Lena Mae Wilkins, swear to the truth of that statement?           A. Yes, she did.

Q. Is that your signature, sir?

A. That is my signature, yes.

Q. Now, Mr. Sachen, going back. How did you happen to interview the defendant, Lena Mae Wilkins?

A. On the morning of September 7 when I appeared in my office there was a note for me stating that Lena Mae Wilkins was down at Honnicutt's and wished to give me a statement regarding [32] her being transported by James Yokely for the purpose of prostitution.

Q. Now, did you then——

Mr. Dunn: Objection, your Honor. I move to strike the witness' answer there because part of it is hearsay. He is testifying to what that note said. We don't know who wrote that note or anything

(Testimony of Joseph V. Sachen.)

about it. He is testifying to someone else's word.

Mr. Kirkland: Excuse me. If the court please, counsel in his opening statement went into great length as to the involuntariness of this statement and I wanted to get everything before the jury as to how this statement occurred.

Mr. Dunn: I ask, your Honor, that he get it before the jury by keeping within the rules of evidence. I don't want him to get it before the jury by the use of hearsay testimony.

The Court: Objection sustained.

Q. (By Mr. Kirkland): Did you interview the defendant, Lena Mae Wilkins?

A. Yes, I did.

Q. And did the defendant make any statement to you? A. Yes, she did.

Q. What were those statements, Mr. Sachen?

Mr. Buckalew: Your Honor, at this time, on the part of my client I would like to object to any statements that Lena Mae Wilkins made to Mr. Sachen because it is certainly hearsay, [33] inadmissible against the defendant Yokely.

Mr. Kirkland: If the court please, I would like to be heard on that.

The Court: Very well.

Mr. Kirkland: The law would uphold that the statement the defendant made would not be hearsay. Only the truth of those statements would be hearsay and is a matter for the jury to decide.

The Court: Mr. Buckalew.

(Testimony of Joseph V. Sachen.)

Mr. Buckalew: I take the position, your Honor, that it is purely hearsay. It is a statement made not in the presence of Mr. Yokely.

The Court: I point out to you though, counselor, in a case of this kind we have two legal points to be determined. One of them is the rights of Mr. Yokely and the other is the admissibility of the evidence as pertains to Mrs. Wilkins and their witnesses in respect thereto. Now, since the crime charged is that of co-conspiracy and both defendants are before the court in one cause of action it is the opinion of the court that your objection is not founded on the law. Therefore, the objection will have to be overruled, but before ruling finally I would like to hear you further if you would like to be heard on that point.

Mr. Buckalew: Your Honor, I would like to make one more observation. This statement was given, I think Mr. Sachen said on the 7th of September. [34]

The Court: Yes, that is correct.

Mr. Buckalew: If the conspiracy did exist it certainly had terminated on the 7th of September and it is my understanding of the law of conspiracy that there must be—for any statement made by Mrs. Wilkins to be admissible against Yokely it must have been made during the life of the conspiracy. This statement was made after the conspiracy terminated and it is clearly hearsay and inadmissible.

Mr. Kirkland: Does the court desire to hear argument on that point?



(Testimony of Joseph V. Sachen.)

The Court: Yes, I do.

Mr. Kirkland: If it please the court, I would like to cite the case of Simpson vs. United States, which is a 9th Circuit Court of Appeals case, our circuit.

The Court: Where is it found, counselor?

Mr. Kirkland: Excuse me, your Honor, 289 F. 188. That, your Honor, was a conspiracy case which was tried down at Juneau, I believe, and that particular point was raised in that case. The court in its Opinion states: "There can be no question of the general rule that, after the abandonment of a conspiracy, the acts or declarations of a conspirator are not admissible against his co-conspirators. 'However, there is a distinction between an abandonment of a conspiracy and the abandonment of the object thereof, and acts or declarations of co-conspirators are admissible where, at the time they were done or made, although the object had been abandoned, the conspiracy continued for the purpose of [35] avoiding detection or exposure.' "

Now, as the facts will bring out in this case, this defendant was still desirous of keeping it hidden and the statement was made to support a white slavery complaint against this defendant, but not as to the conspiracy. Now, going one point further——

The Court: Just a moment, please.

Mr. Buckalew: Excuse me, your Honor, could I ask that the jury be excused.

The Court: If you think it is detrimental.

Mr. Buckalew: I think it is, your Honor.



(Testimony of Joseph V. Sacken.)

The Court: What is your position?

Mr. Kirkland: I have no objection as to whether the jury is excused or not.

The Court: Are you about concluded or——

Mr. Kirkland: Yes, your Honor, I have about 4 more sentences I want to say.

The Court: Well, I wish you would bear in mind, Mr. Kirkland, as you argue this fact, the fact that the jurors are still here and, therefore argue the law and not the particular set of facts in this particular case.

Mr. Kirkland: Very well, your Honor. I believe the general rule of law on that point, as to after the conspiracy ended goes to acts or declarations after the conspiracy has ended. That is, such as a threat to a witness which—of course, assuming that one conspirator threatened a witness after the conspiracy was [36] over—that, of course, would be evidence of guilt against that co-conspirator and is the general rule to which, I believe, Mr. Buckalew is referring. That particular piece of evidence would not be admissible against the other co-conspirator, but the facts and declarations to which this witness is testifying to are acts and declarations that occurred during the conspiracy and I contend that is one of the distinctions.

The Court: Did you want to reply to that, Mr. Buckalew? The court hasn't read the case, Mr. Buckalew, but it is the opinion of the court, as I announced heretofore, that we have 2 questions of evidence to consider and the rights of the 2 defend-

(Testimony of Joseph V. Sachen.)

ants, and the court is of the opinion that is admissible for the reason Mr. Kirkland gave, however, I would like to hear you further.

Mr. Dunn: If the court please, I would like to be heard on this in respect to the defendant, Wilkins.

The Court: Very well. Do you feel the jury should be dismissed before you——

Mr. Dunn: I think it is in keeping with established practice, your Honor. It is strictly a matter of law and not a matter of fact. I don't think it can do anything other than possibly confuse the jury or enable the jury to hear from the counsel facts which may eventually prove inadmissible to the jury.

The Court: Very well. Then, ladies and gentlemen of the jury, the court will have to excuse you.

(Whereupon, the jury left the jury box [37] and retired to the jury room to await being called, and the following proceedings were then had, in the absence of the jury:)

Mr. Dunn: Now, if I understood Mr. Kirkland correctly, your Honor, he cited this case as authority for his contention that the facts to which this witness is about to testify are admissible as facts occurring during the conspiracy.

The Court: That is correct.

Mr. Dunn: Now, if he claims that this conspiracy continued for any reason at all to avoid prosecution or for any other reason up to the time of these alleged statements, that would be September

(Testimony of Joseph V. Sachen.)

7 as I have it, then I take it that that is a preliminary fact which would have to be established prior to the admitting of the evidence itself.

The Court: Excepting this, counselor, how would it be physically possible to have that fact known until the evidence was in so you could find out?

Mr. Dunn: Well, that, fortunately, as far as I am concerned, is Mr. Kirkland's problem, not mine.

The Court: But then the court has to rule on it.

Mr. Dunn: Well——

The Court: How can I rule on something that is not before me?

Mr. Dunn: I am trying to get it before you right now. If it is admitted law that the facts to which Mr. Sachen is about [38] to testify to are inadmissible unless they took place during the conspiracy. If that is admitted, as I understand it is, then surely as a matter of reason those facts cannot come in until the continuation of that conspiracy is established. Now, how Mr. Kirkland can do that I don't know. As a matter of fact, I rather doubt if he can. That is one of the reasons I am objecting here, but if he can't by his own case—as I understood him to read it, I haven't read it—the statements are inadmissible. Now, further, I would like to cite to the court *Ellis vs. United States*, 138 F. 612, and *United States vs. Groves, et al.*, 122 F. 2d 87, as authority for the proposition stated by Mr. Buckalew that a statement made after the conspiracy, if indeed there was a conspiracy, is inadmissible. I don't think—

(Testimony of Joseph V. Sachen.)

ants, and the court is of the opinion that is admissible for the reason Mr. Kirkland gave, however, I would like to hear you further.

Mr. Dunn: If the court please, I would like to be heard on this in respect to the defendant, Wilkins.

The Court: Very well. Do you feel the jury should be dismissed before you——

Mr. Dunn: I think it is in keeping with established practice, your Honor. It is strictly a matter of law and not a matter of fact. I don't think it can do anything other than possibly confuse the jury or enable the jury to hear from the counsel facts which may eventually prove inadmissible to the jury.

The Court: Very well. Then, ladies and gentlemen of the jury, the court will have to excuse you.

(Whereupon, the jury left the jury box [37] and retired to the jury room to await being called, and the following proceedings were then had, in the absence of the jury:)

Mr. Dunn: Now, if I understood Mr. Kirkland correctly, your Honor, he cited this case as authority for his contention that the facts to which this witness is about to testify are admissible as facts occurring during the conspiracy.

The Court: That is correct.

Mr. Dunn: Now, if he claims that this conspiracy continued for any reason at all to avoid prosecution or for any other reason up to the time of these alleged statements, that would be September

(Testimony of Joseph V. Sacher.)

7 as I have it, then I take it that that is a preliminary fact which would have to be established prior to the admitting of the evidence itself.

The Court: Excepting this, counselor, how would it be physically possible to have that fact known until the evidence was in so you could find out?

Mr. Dunn: Well, that, fortunately, as far as I am concerned, is Mr. Kirkland's problem, not mine.

The Court: But then the court has to rule on it.

Mr. Dunn: Well——

The Court: How can I rule on something that is not before me?

Mr. Dunn: I am trying to get it before you right now. If it is admitted law that the facts to which Mr. Sacher is about [38] to testify to are inadmissible unless they took place during the conspiracy. If that is admitted, as I understand it is, then surely as a matter of reason those facts cannot come in until the continuation of that conspiracy is established. Now, how Mr. Kirkland can do that I don't know. As a matter of fact, I rather doubt if he can. That is one of the reasons I am objecting here, but if he can't by his own case—as I understood him to read it, I haven't read it—the statements are inadmissible. Now, further, I would like to cite to the court *Ellis vs. United States*, 138 F. 612, and *United States vs. Groves, et al.*, 122 F. 2d 87, as authority for the proposition stated by Mr. Buckalew that a statement made after the conspiracy, if indeed there was a conspiracy, is inadmissible. I don't think—



(Testimony of Joseph V. Sachen.)

well, I won't argue that because I am getting into Mr. Buckalew's field here. Only those 2 points, your Honor. Thank you.

The Court: Very well.

Mr. Kirkland: If the court please, I would like to be heard.

The Court: Let's keep order in this. The court hasn't heard Mr. Buckalew yet.

Mr. Buckalew: Your Honor, I believe that the case cited by Mr. Kirkland is clearly distinguishable from the general proposition of law that acts or declarations of one conspirator made after the termination of the conspiracy is inadmissible. Now, the case Mr. Kirkland cited, from the facts it appears that [39] there was a general conspiracy to transport whiskey between, apparently, Canadian waters and Alaskan waters. While the conspiracy was alive they were in the process of violating the law. They were apprehended. The Coast Guard Cutter chased them or something and actually it was so closely tied to the conspiracy that actually it was part of the conspiracy. They hadn't even had a chance to terminate the conspiracy. I want to point out to his Honor that the indictment here charges that on the 8th day of April they did so and so. That is in the first count. Now, the second count, that on the 13th day of April they did so and so. Now, some 6 months later this defendant makes a statement to Mr. Sachen. Now, there can't be any question about it—



(Testimony of Joseph V. Sacher.)

The Court: Just a moment, please. Doesn't it relate back to the acts of the 8th and 13th?

Mr. Buckalew: I don't know what is in the statement.

The Court: That being the case then, aren't you arguing something you don't know?

Mr. Buckalew: I know this, your Honor—from what I know about it and from the face of the indictment that the conspiracy must have been over because she says on the 8th day of April they conspired. On the 13th of April they conspired to do so and so. Now, 6 months later she gives a statement.

The Court: Excepting this: Mr. Kirkland argues they may not make a statement after the conspiracy unless it reverts back to the acts done at the time of the conspiracy. I think that [40] is the point you have overlooked.

Mr. Buckalew: I don't think Mr. Kirkland said that. I don't want to disagree with the court, but I don't believe that is what Mr. Kirkland said.

The Court: I am afraid the record is to the contrary.

Mr. Buckalew: I wish his Honor would take the time to read the case cited by Mr. Kirkland. I think you would clearly see it is distinguishable.

The Court: Of course, under what you state to the court it is obvious there is a difference as to the point of time. Then you haven't argued the point, counselor. You haven't met the argument, as I see it, that Mr. Kirkland has propounded. That is, the

(Testimony of Joseph V. Sachen.)

general premise of conspiracy cannot be brought into evidence if by chance it comes after, but it may be admitted if by chance it reverts back to the time that the acts were in fact committed and for which the defendants are charged.

Mr. Buckalew: Your Honor, I will just take a minute to read from the case cited by the Government and I quote, "There can be no question of the general rule that, after the abandonment of a conspiracy, the acts or declarations of a conspirator are not admissible against his co-conspirators. 'However, there is a distinction between an abandonment of a conspiracy and the abandonment of the object thereof, \* \* \*'" Now, in the case cited by Mr. Kirkland you have conspiracy to transport alcohol; the transporting of alcohol from Canadian waters to Alaskan waters. [41] They catch them in a boat that has got whiskey on it. Now, the indictment here alleges that on the 8th day and on the 13th day of April they conspired to go to Fairbanks and then to Kodiak. We know that conspiracy has terminated. There is no question about it. It is not the same situation at all, your Honor, as transporting whiskey from Canadian waters to Alaskan waters. I mean, that is something that is continuing.

The Court: That is right, but you cite this particular case as being distinguishable upon the facts, but you don't differentiate between the general statement of law in that case from the proposition Mr. Kirkland urges upon the court at this time.

(Testimony of Joseph V. Sacken.)

Mr. Buckalew: As I understand the general statement of the law——

The Court: Let's not go into the general statement of the law. I would like to have you meet his proposition in your argument.

Mr. Buckalew: I think I have met it, your Honor, because from the case that he cited to the court it seems to me that the conspiracy had not terminated.

The Court: Well, the court takes a different view.

Mr. Dunn: May I take another crack at it?

The Court: Well, we have got to terminate this somewhere.

Mr. Dunn: Here is the thing. I now have a little [42] different understanding of what the court's position is than I had when I spoke a moment ago. I think I can answer your question.

The Court: Well, you may proceed then. I will hear Mr. Dunn then I will hear you, Mr. Kirkland.

Mr. Dunn: Now, as I understand the court's present thinking it is this—I will continue and if I am wrong I will stop—the court is considering as a fact that an admission or a statement of a defendant subsequent to the termination of the conspiracy is admissible if the facts contained in the statement are concurrent in time or relate back to the conspiracy. Now then that is answered, I believe, your Honor, by the 2 cases that I just cited and I have only the footnotes in the U. S. Code, but one of them is this: “In prosecution for transporting in

(Testimony of Joseph V. Sachen.)

interstate commerce girls for immoral purposes, testimony that during investigation of case—now, that is subsequent to the conspiracy, your Honor—the girls, an investigator, an assistant state prosecutor and father of one of girls located and identified cabin in which the girls stated that they and defendants had once tarried illicitly which was hearsay and incompetent.” Now, the facts contained in the statement mentioned in this case relate back to the time it was held hearsay and incompetent.

In the second case, that of *United States vs. Groves*, it was to the effect that where it was shown—and I am paraphrasing this—that shortly after indictment was returned the defendant had removed papers from a Montreal bank vault and had sought to [43] have them destroyed. Testimony was that co-defendant had said to his wife that the papers were just evidence of what the Government wanted and that it was very awkward—that the defendant could not burn them and was inadmissible against defendant as hearsay constituting a narrative statement made after the termination of the conspiracy. Now, if I understand that case correctly it says, “Narrative made subsequent to the conspiracy is inadmissible whether the facts contained in the narrative go back to the time of conspiracy or not,” and that is the first case dealing with facts that were concurrent in time with the conspiracy and that testimony was held inadmissible.

The Court: Let me attack it from a different viewpoint. You do not take the position, do you,

(Testimony of Joseph V. Sacken.)

that statements contrary—well, suppose that the evidence—the defendant may at this time get on the witness stand—and argued as not admissible, do you? Conflicting statements made by the defendants? Let's assume they were to be called as witnesses and they would be called as a witness, surely you don't take the viewpoint that a prior statement, even in conspiracy, could not be admitted to show inconsistencies.

Mr. Dunn: Your Honor, I admit readily that any statement made prior in time inconsistent with the present testimony of a witness may be admitted for the purpose—my admission goes no further than of impeaching that witness.

The Court: Aren't we in about the same position here now? Could not the court come along and instruct the jurors [44] that they would have to take into consideration the truthfulness of the statement itself.

Mr. Dunn: That, of course, is a wholly collateral matter, but I don't think that it is a correct ruling for the court to say that if under a different set of circumstances, namely, for the purpose of impeaching a defendant who had taken the stand on certain statements to come in, that those statements may come in under any set of circumstances.

The Court: Well, you have had your say.

Mr. Buckalew: Your Honor, could I—

The Court: No, the court has heard you twice.  
Mr. Kirkland.

Mr. Kirkland: If the court please, Mr. Dunn in



(Testimony of Joseph V. Sachen.)

citing the last case, the one about burning the papers, I believe that was the Groves case—I don't know whether counsel read that case or not. I read the case and I wouldn't swear to the facts as he stated here, but I believe that case will support my contention because in that case it was where one person is talking to his wife, a co-defendant, and he says to the other man, "I didn't burn the paper." This is after it is ended; after they are caught. He said, "I didn't burn the papers because it was hard to get rid of them." Now, that was admissible against him, but not against the co-conspirator because it is something conjectured after it has ended.

Now, in Mr. Buckalew's case, regarding catching them in a boat, [45] well, now if Mr. Buckalew read the case, the facts, I believe that he will discover the statements were made much later after they were caught and the conspiracy had terminated, but it went to the acts that occurred during the conspiracy.

I would like further to cite a 1952 case decided by the Supreme Court of the United States, found in 346 U. S. 156. Now, that goes to the admissibility of confessions and statements as to how they apply to the third party.

The Court: But does it refer to the question of conspiracy?

Mr. Kirkland: Not conspiracy itself, but it is where the defendants are jointly charged. There are 3 defendants and 2 of them made statements



(Testimony of Joseph V. Sachen.)

and as to the admissibility of those statements against the third party.

The Court: The only thing the court is concerned about at this time is the question of conspiracy. The court is well aware of that other doctrine. I have already indicated that we have 2 public policies that we must consider.

Mr. Kirkland: There is one more point which is probably the most important point that I should urge at this time and that is that counsel's objection and all of his cases have to do with written statements going into evidence. At this time I have not even offered that statement into evidence and, of course, counsel can read from that to refresh his memory. There is no question whatsoever about that and the court will even [46] instruct the jury to view with caution oral admissions. Now, at this stage it is admission because I haven't offered it in evidence.

The Court: That was the point I made sometime ago. We are arguing about something we don't even know at this time and I felt it was premature. However, it is just as well we have argued it out and come to a conclusion on the matter. Are you through now?

Mr. Kirkland: Yes.

The Court: Objection overruled.

Mr. Buckalew: Permit me to make one more comment.

The Court: No, the court has ruled. You may call the jury back.

(Testimony of Joseph V. Sachen.)

Mr. Buckalew: What was His Honor's ruling on that?

The Court: That the objection is overruled.

Mr. Buckalew: What does His Honor propose to let into evidence?

The Court: Nothing at this time because nothing has been offered in evidence.

Mr. Buckalew: His Honor wouldn't have any objection to renewing the objection and arguing it at a later date?

The Court: No, surely not.

(Thereupon, the bailiff recalls the jury and the jury returns to the courtroom, thereafter the following proceedings were had:)

The Court: You may proceed, Mr. Kirkland.

Q. (By Mr. Kirkland): Mr. Sachen, do you remember the last question that was asked you?

A. Not very well, Mr. Kirkland.

Q. Very well, I will repeat the question. This statement the defendant made to you, what was the contents of that statement?

A. The general contents of that statement was——

Q. You can refresh your recollection, if you desire, sir.

A. Do you want me to start right from the beginning, Mr. Kirkland, or do you want me to——

Q. That is right, from the beginning.

A. Right at the time of the meeting Mrs. Wilkins——

(Testimony of Joseph V. Sachen.)

Mr. Buckalew: Your Honor, for the record I am going to have to object again to his reading anything from the statement.

The Court: He isn't reading. I understood it was not to be read.

Mr. Buckalew: He is going to refresh his recollection and then tell the jury what is in it.

The Court: Yes.

Mr. Bukalew: I object to it on the grounds that it is inadmissible.

The Court: What is your position, Mr. Dunn?

Mr. Buckalew: That the conspiracy has terminated and it is not admissible against my client, Mr. Yokely. [48]

The Court: Very well.

Mr. Dunn: Your Honor, I join in the objection on behalf of the defendant, Wilkins, and I ask the court if it is not proper that defense counsel requests permission to examine this statement. I would like to see what it is.

The Court: You may do so. The statement may be handed to counsel for the defendants. I wonder if this wouldn't be an opportune time to take a 10-minute recess. We have been in session for an hour now and you will have a chance to study it better. Court will stand in recess for 10 minutes.

(Whereupon, at 2:35 o'clock p.m., following a 10-minute recess, court reconvenes and the following proceedings were had:)

The Court: Let the record show all the jurors

(Testimony of Joseph V. Sachen.)

are back and present in the box. Mr. Dunn and Mr. Buckalew, have you had a chance to study this particular document?

Mr. Dunn: We have, your Honor.

Mr. Buckalew: We have, your Honor.

The Court: You may proceed then, Mr. Kirkland.

Q. (By Mr. Kirkland): Now, Mr. Sachen, will you relate the events leading up to the statement?

A. When I received the message that Mrs. Wilkins wanted to talk to me down at Hunnicutt's I immediately proceeded there with another agent. When we arrived at Hunnicutt's we [49] asked a bartender if Mrs. Wilkins was there. He stated she was not there.

Q. Excuse me—well, go ahead.

Mr. Dunn: Same objection to the hearsay.

The Court: Mr. Sachen, may the court advise you not to refer to hearsay testimony, that is, what somebody else told you unless the defendants were present themselves.

A. Yes, sir.

The Court: You can say, "I was informed," or "I was advised," but you must not state what they said.

A. When I arrived down at Hunnicutt's I was advised that Lena Mae had telephoned Ted Pass, Anchorage Police Detective, and that she was up at the Anchorage Police Department. I immediately proceeded up to the Anchorage Police Department

(Testimony of Joseph V. Sachen.)

where I met Mrs. Wilkins. I introduced myself by producing my credentials and she stated then she wanted to give me a signed statement implicating Yokely as transporting her from——

Mr. Buckalew: Your Honor, at this time I object to it on the additional ground that the statement was involuntary. At the time the statement was given to Agent Sachen, Lena Mae was in such a state of drunkenness she didn't have a capacity to act free and voluntary. In other words, she didn't have any control over her actions.

Mr. Kirkland: If he wants to argue I suggest we have [50] hearing out of the presence of jury or in the presence of jury if the counsel wishes.

The Court: No, it should be out of the presence of the jury. Counsel may approach the bench in respect thereto.

Mr. Dunn: I'd like to be on the record as joining in the objection, your Honor, on behalf of the defendant, Wilkins.

The Court: Very well. Now you may come to the bench and Mr. Kirkland, the court would like to have you come to the bench also.

(Whereupon, counsel for the plaintiff and the defendant approached the bench and the proceedings were out of the hearing of the jury.)

The Court: Now, Mr. Buckalew, you made an objection and stated as your grounds, she was drunk at that time. Now, there is nothing in the evidence to indicate that is true.



(Testimony of Joseph V. Sachen.)

Mr. Buckalew: As I understand the law, your Honor, it is probably a preliminary question. His Honor will have to interrupt the trial at this stage of the proceedings and hear evidence on it.

The Court: I think that is probably correct.

Mr. Dunn: I think that is correct.

Mr. Kirkland: That is correct.

The Court: We are all agreed on that. That being the case, the court will have to excuse the jury and then to rule upon the admissibility of the statement. [51]

Mr. Buckalew: Here is the position we are in, your Honor. We didn't realize that the statement was going to be attempted to be offered at this early stage. Probably take us—how long to get our witnesses?

Mr. Dunn: I think we can get one witness here in 15 minutes. Just how long it will take us to round them up I don't know. I think the defendant has friends in the court room with automobiles. We will send out for them immediately.

The Court: What is your position?

Mr. Kirkland: I am willing to have the hearing now. I can put mine on, and by that time, they can possibly have theirs here.

The Court: That is a good suggestion. Ladies and gentlemen of the jury, the court must accept and hear evidence at this time as to admissibility of certain documentary statements and this must be determined out of your presence. Therefore, the court will have to excuse you to retire to your jury



(Testimony of Joseph V. Sachen.)

room. The court will remain in session to hear this evidence.

(Thereupon the jury was excused and left the courtroom and the following proceedings were had:)

Mr. Kirkland: Could I request that the bailiff call the United States Commissioner and the City Magistrate, and please advise Mr. Fitzgerald in the United States Attorney's Office and request they come down to the courtroom.

The Court: Thank you. Can you do that for us, Mr. Hale, [52] please. Counselor, I wonder if you couldn't proceed with this witness at this time in respect to the question of proof.

Q. (By Mr. Kirkland): Mr. Sachen, now that the jury is gone will you tell in detail how you took this statement and what occurred until it was signed before the United States Commissioner under oath?

The Court: In that respect, counselor, isn't our only point to be determined at this time is whether or not the statement was voluntary or involuntary? Therefore, the other evidence that he is about to give, I do not believe would be germane to the determination legally of this question.

Mr. Kirkland: Possibly I misphrased it, your Honor. What I intended was how he got called to take it, the condition of the defendant, where he took the defendant and that proceeding, not as to the contents of the statement.

The Court: Well, you may do that then.

(Testimony of Joseph V. Sachen.)

Mr. Dunn: Your Honor, could I ask a favor from the court, that we stop here for just a couple of minutes while I give one of these people information as to where to go to get the witnesses I need.

The Court: You may.

Mr. Buckalew: Your Honor, could we have a recess at this point?

The Court: Would you like a 5-minute [53] recess?

Mr. Buckalew: Yes, sir.

The Court: Very well. The court will stand in recess for 5 minutes.

(Whereupon, at 2:50 o'clock p.m., following a 5-minute recess, court reconvenes and the following proceedings were had:)

The Court: You may proceed, Mr. Kirkland.

Q. (By Mr. Kirkland): Mr. Sachen, will you relate to the judge the facts and circumstances leading to the taking of this statement? How it was taken, the condition of the defendant and any acts that the defendant Wilkins made after giving this statement? I am confident that the hearsay will be absolutely admissible as to how you were notified. Am I correct, your Honor?

The Court: Of course, it is before the court, therefore, you will be given lots of latitude. The court must get at the facts in order to rule on this matter. You may proceed.

A. Your Honor, do you want me to start right from the beginning and say how I was notified?

(Testimony of Joseph V. Sachen.)

The Court: No.

A. Just the time I first met the defendant?

The Court: Yes, if you would, please.

A. I arrived at the Police Station. I introduced myself, as I previously said, and I asked her if she wanted to give a [54] signed statement. She said, "Yes, she did." I noticed she was drinking a little bit, but she wasn't drunk and I talked to her first to find out all the facts she had and then I started taking a signed statement exactly how she said it. After she got through I again said she did not have to sign this, that she had a right of counsel and anything she said might be held against her in any court of law. Then I asked her again if everything that she said was true and she said, "Yes, it was." I then proceeded to take her down to the Flats. She wanted to go down to the Flats so as we got about 2 blocks from 1806 East "I" Street, where she resided, she said, "Let me off here," and she would meet Mr. Pass and myself back at the Police Station at 1:00 o'clock. I gave her a dollar and she said she would take a cab back instead of us picking her up again at 1:00 o'clock. At 1:00 o'clock we met her at the station again. Mr. Pass at that time had some business to do with the City Magistrate, Mr. George McLaughlin. He said that she had signed another complaint on the charge of maintaining a bawdy house at this place. We went from there over to see the Assistant United States Attorney, Mr. Jim Fitzgerald. She read the statement and she made some corrections and initialed

(Testimony of Joseph V. Sachen.)

them. Mr. Fitzgerald asked her if everything was true in that statement and she said, yes, it was, and he stated that due to the fact her past record and character, [55] and due to the fact that she was a poor Government witness at one time that he would like to make this signed statement in affidavit form. So we proceeded to go down to the U. S. Commissioner's office where she swore that the statement was true and the U. S. Commissioner, Mr. Hartlieb, signed the statement.

The Court: Very well.

Mr. Kirkland: Now, I would like to ask the witness a few further questions.

The Court: Very well.

Q. (By Mr. Kirkland): Now, Mr. Sachen, as to the contents of that statement. Has the truth of the contents of that statement been verified?

A. When she gave me the statement our investigation showed that——

Q. Excuse me, I don't want to go into each and every part of our case until the proper time, but have you verified the truth of the contents of that statement, that is, as to letters mailed, telegrams, airplane rides, and so forth?

A. Yes, all but one leg of the hop has been verified. The dates were not exactly as she said, but they were quite close to the dates she said in the signed statement.

Q. Now, was the defendant drunk?

A. I wouldn't say she was drunk. She was drinking, I think, early in the morning because I

(Testimony of Joseph V. Sachen.)

could smell it on her. That [56] was, of course, around 9:00 o'clock that we interviewed her. In fact, I have an interview log of what time we started to interview her, what time we advised her of her rights, that she didn't have to say anything to me and anything she said might be held against her in court and also told her she had a right to counsel and that started at 9:20 in the morning. She was advised of her rights to counsel at 9:22 a.m. on September 7. The time of giving the information of her participation of the crime admitted was 9:25 and by the time I got through having the oral interview with her it was 9:40 and the time the statement was ready for dictation was 9:45. The time she signed the statement was at 10:20.

The Court: Which statement are you referring to? The one before Commissioner Hartlieb?

A. Yes, the statement in front of Commissioner Hartlieb, the signed statement she gave to me.

The Court: Very well.

Q. Now, that was in the morning. Then it was in the afternoon in the presence of Mr. Fitzgerald and also the City Magistrate, is that correct?

A. Yes, that was between—I will say between 1:00 and 1:30 when we went to the City Magistrate's office to sign another complaint against this house where she was living and then from there we proceeded over to the United States Attorney's office and talked to Mr. Fitzgerald. [57]

Q. Now, was the defendant unsteady on her feet? A. No, she wasn't.



(Testimony of Joseph V. Sachen.)

Q. Did she have trouble talking?

A. No, she didn't.

Mr. Kirkland: Your witness.

The Court: You may cross-examine, Mr. Buckalew.

Mr. Kirkland: Now do both counsel have the right to cross-examine each witness or——

Mr. Buckalew: I would think so, your Honor.

The Court: I think so. Ordinarily that is not true, but I think in this case since we have 2 defendants that each should cross-examine if they desire.

Mr. Dunn: Your Honor, we do have 2 defendants and I certainly think Mr. Buckalew is every bit as capable an attorney as I am, but I think it is a matter of common knowledge that attorneys approach things from different angles and I wouldn't want to be bound by what Mr. Buckalew has done and I am certain he wouldn't want to be bound by what I have done.

The Court: Excepting this, counselor, the court couldn't permit you to ask repetitious questions.

Mr. Dunn: Your Honor, you are putting each of us in the position of having to be satisfied with what the other elicits.

The Court: No, that isn't what I said. You just can't go over the same ground. Assume, for example, she testified it was 10:21 instead of 10:20 when she signed the statement. Now, [58] surely you wouldn't want to——

Mr. Dunn: I think we can rely upon Your



(Testimony of Joseph V. Sachen.)

Honor's fairness. If it becomes a problem we can discuss it.

The Court: I am sure of that. Very well, you may proceed then.

Mr. Buckalew: Just for the record I believe Mr. Dunn objected on the same grounds as I did, didn't he?

Mr. Dunn: To what?

Mr. Buckalew: To the admissibility of this statement.

Mr. Dunn: Yes.

### Cross-Examination

By Mr. Buckalew:

Q. Who was first notified that Lena Mae Wilkins wanted to talk to somebody?

A. I don't know what time Mr. Pass was, but I previously said, Mr. Buckalew, that when I arrived at the office at 8:00 o'clock in the morning there was a message for me from, I presume, our night clerk stating that Lena Mae wanted to talk to me.

Q. Did you proceed down to Leroy's place with Mr. Pass or did you go by yourself?

A. I went with Mr. A. B. Clark, another agent.

Q. When you arrived at Leroy's place was Mr. Pass already there? [59]

A. Mr. Pass, according to the bartender when I asked him, was already there and Lena Mae was with him at the Anchorage Police Department.

(Testimony of Joseph V. Sachen.)

Q. Then you proceeded from Leroy's place back to the Anchorage Police Department?

A. Yes, sir.

Q. You testified Lena Mae had been drinking?

A. I said she smelled of liquor.

Q. You don't know whether she had been drinking or not?      A. I presume she was drinking.

Q. Mr. Sachen, has Lena Mae Wilkins got a pretty vile tongue?

A. Yes, I would say she had.

Q. Did she throw scenes all over the Police Station like a drunk person?

A. No, not at the Police Station. She was a perfect lady, I will have to say.

Q. You have seen Lena Mae on occasions when she wasn't a perfect lady?      A. Yes, I have.

Q. That was the same day?

A. Yes, I have.

Q. How long did it take Lena Mae Wilkins to read that statement?

A. I will have to refresh myself on that.

Q. You have the statement, Mr. Sachen?

A. Yes, I have. [60]

Mr. Buckalew: May I see it, your Honor.

(Thereupon, the statement was handed to Mr. Buckalew.)

A. It took her exactly 10 minutes. It was turned over to her at 10:20 and she completed it and signed it at 10:30.

(Testimony of Joseph V. Sachen.)

The Court: How many pages does it consist of, counselor?

Mr. Buckalew: 3 full pages, your Honor, and about  $\frac{3}{4}$  of a 4th page.

The Court: Typewritten?

Mr. Buckalew: Yes, sir, double spaced. Does His Honor want to look at it?

The Court: No, I was just interested.

Q. Mr. Pass was present when she read the statement?

A. Yes, Mr. Pass was present while she was being interviewed and the statement was taken.

Q. You didn't take Lena Mae down to Mr. Hartlieb?

A. Yes, that was in the afternoon, sir.

Q. Did you ask her then if the statement was true or——

A. Mr. Fitzgerald took care of that, sir.

Q. You weren't present when she signed the statement?      A. Yes, I was.

Q. Do you recall Judge Hartlieb asking Lena Mae Wilkins if she was in fact drunk?

A. That I cannot recall, but I know he asked her if everything in that statement was true and she said yes.

Q. But you can't recall whether or not Judge Hartlieb asked her [61] if she was drunk?

A. I can't recall that because I was on the other side of Mr. Fitzgerald. He might have asked it, but I don't know.

Q. What frame of mind was Lena Mae Wilkins

(Testimony of Joseph V. Sachen.)

in?       A. What time of the day, sir?

Mr. Kirkland: Your Honor, I don't know if it is necessary to interpose objections as His Honor can distinguish what is material and what isn't material, but for the purpose of the record probably I should interpose an objection. The frame of mind of the defendant has nothing whatsoever to do with the voluntary——

The Court: It may have some probative value as to whether or not she was drunk or whether she gave the statement voluntary or involuntary, but I ask counsel not to go too far afield.

Q. (By Mr. Buckalew): Say at 9:25?

A. At 9:25 I would say she didn't show any vile temper or anything. She sat there and smoked a cigarette and gave us the story of which is in that statement.

Q. Would you say she was visually upset at 9:25?

A. I wouldn't say she was visually upset at 9:25. She was at 2:30 in the afternoon.

Q. Do you know whether or not Lena Mae Wilkins had anything to drink between 9:25 and 2:30 in the afternoon? [62]

A. She might have. I don't know because I told you, as I said previously, that we took her down in the Flats and let her off 2 blocks from her residence, approximately 2 blocks from her residence and she was back at 1:00 o'clock, like we instructed, at the Police Station.

Q. Did you ever have occasion to observe Lena

(Testimony of Joseph V. Sachen.)

Mae Wilkins on any other occasion other than this occasion we are talking about?

A. No. I have seen Lena Mae Wilkins in my investigations, but I have never known her personally or talked to her previous to the time she gave me the signed statement.

Q. You have never seen Lena Mae Wilkins drunk then?

A. I have never seen her drunk, no.

Q. Did you ask Lena Mae Wilkins to initial certain portions of this statement?

A. Yes, the initials that you see in that statement when she reread it in front of the Assistant United States Attorney Jim Fitzgerald. She made her own corrections and her own initials.

Q. As a matter of fact, Mr. Sachen, did you deliberately make mistakes in the paper and point them out to her and have them initialed?

A. Did I deliberately——

Q. Yes.           A. No, I did not. [63]

Q. You didn't do that?

Mr. Kirkland: Your Honor, I object to this line of questioning and I think the court should remonstrate him.

The Court: The objection is sustained as to the last question.

Q. (By Mr. Buckalew): Do you want to look at Lena Mae Wilkin's signature?

A. Sure, I was there when she signed it.

Q. Does that look like a steady signature to you?

A. Well, I have never seen other signatures of

(Testimony of Joseph V. Sachen.)

Lena Mae Wilkins, counselor, so I wouldn't know.

Q. Look at that signature?

A. I am looking at it.

Mr. Kirkland: Your Honor, I am objecting to this.

The Court: Objection sustained. What difference does it make. He testified she was not drunk at the time.

Mr. Buckalew: I want His Honor to look at the signature before he rules on it.

The Court: I will. Are you through, counselor?

Mr. Buckalew: Yes, your Honor.

The Court: Mr. Dunn. Can we proceed right along, counselor, please.

Mr. Dunn: I am doing my best. I am trying to mentally assemble notes I took rather hurriedly here. [64]

#### Cross-Examination

By Mr. Dunn:

Q. Mr. Sachen, you testified that you smelled liquor on the breath of the defendant Wilkins. How far away from her were you when you smelled the liquor?

A. Oh, I sat at the desk and she sat a foot and a half, two feet from me.

Q. Was she on the other side of the desk?

A. No, she was on my left.

Q. Your heads would be at least two feet apart?

A. I would say probably that.

Q. You smelled it that far away?



(Testimony of Joseph V. Sachen.)

A. Oh, yes.

Q. Now, when you first saw Lena Mae Wilkins was at the Anchorage Police Department, isn't it?

A. Yes, sir.

Q. Was she and Officer Pass alone?

A. She and Officer Pass and I think someone else was there, but I do not remember, sir. It was in the detective room.

Q. What was her general appearance at that time? Was she neatly dressed?

A. I wouldn't say she was spick and span. I would say she was——

The Court: Disheveled? [65]

A. Disheveled. Thank you, Judge.

Q. But with a little bit of aid the word disheveled did come into your mind with respect to her appearance?

A. I have never seen Lena Mae before this time to speak of and I really don't know—or seen her groomed or not groomed. I will say she was, I presume she was on an all-night tear. I just presume that because she called my office much before I came to work which was 8:00 o'clock in the morning, at 7:30 rather.

Q. I want to be certain I understood your statement correctly. Did you say that you presumed that she had been on an all-night tear?

A. I said I don't know. I said I don't know if she had been or not.

Q. Did you say you presumed she had?

(Testimony of Joseph V. Sachen.)

A. She might have been for all I know.

Q. I am not asking you whether she was or was not. I am asking you what you said just now. Did you say that when you first saw her you presumed she had been on an all-night tear?

A. She had been drinking most of the night I presume. I presume she had most of the night—rather I don't know, sir.

Q. I hate to keep asking this question, but I am going to until it is answered. When you first saw—did you testify just a minute ago that when you first saw Lena Mae you presumed that she had been on an all-night tear? [66]

A. I presume—that is what it looked like to me, yes, sir.

Q. Do you think she hadn't been to bed all night? A. That I don't know.

Q. Were her eyes puffy?

A. I can't remember.

Q. Did she seem particularly nervous?

A. No, not necessarily.

Q. Did you ask her before you took a statement from her what she had been doing all night?

A. No, I didn't, sir.

Q. Did you ask her how much she had had to drink?

A. No, I didn't. At that time she was my witness and I didn't ask her.

Q. Whose pen did Lena Mae use to sign that statement?

(Testimony of Joseph V. Sachen.)

A. I don't remember. I think it was my own, but I don't remember, sir.

Q. Did you have a pretty good pen?

A. Parker 51 I had. I haven't got it any more.

Q. How long do you think it would take you to read that statement?

Mr. Kirkland: I object to this, your Honor.

The Court: Objection sustained.

Mr. Kirkland: It has nothing to do with whether the witness was too——

The Court: The court sustained your objection; let's not waste any more time. [67]

A. How long would it take me?

The Court: Don't answer the question.

Mr. Dunn: That objection was sustained, Mr. Sachen.

A. Thank you.

Q. Now, you testified that you did not hear Judge Hartlieb, the Commissioner, ask the defendant Wilkins whether or not she was drunk?

A. No, I didn't hear that, sir.

Q. Now, how far were you from Judge Hartlieb during the proceedings that took place with respect to the defendant Wilkins at that time?

A. Oh, I would say 3½ to 4½ feet.

Q. Then you would be in a position, in all probability, to have heard everything that Judge Hartlieb said, wouldn't you?

A. Well, there was Judge Hartlieb. There was Mr. Fitzgerald who was talking to Judge Hartlieb and then myself.

(Testimony of Joseph V. Sachen.)

Q. Well, you were pretty interested in what was going on there, is that true?

A. Well, yes I was, but as I testified, Mr. Fitzgerald was handling that phase of it right there, sir.

Q. You felt that your presence there was necessary?

A. Yes.

Mr. Kirkland: Now, your Honor, I object to any further questions on this. I will provide Mr. Hartlieb and he can ask him on cross-examination.

The Court: I think that counsel has a right to determine what went on at that particular trial since this witness has testified that he did not recall Judge Hartlieb did ask her such a question. Therefore, the objection will be overruled.

Q. Were you paying pretty close attention to what went on down there?

A. Well, I was there. I know that Mr. Fitzgerald was handling the case or handling that phase of it. I was there and listening to it. I didn't get all of it or I don't remember all of it.

Q. Well, let me repeat the question. Now, were you paying pretty close attention to what took place down there?

A. I was paying attention, but not too close; not as close as I would be if I were bringing her in front of the U. S. Commissioner, sir.

Mr. Kirkland: Your Honor, may I ask what counsel are doing? Both of them are cross-examining the witness. One goes through and one gets together—we will be here way after New Year's on this case.

(Testimony of Joseph V. Sachen.)

The Court: Objection sustained.

Mr. Buckalew: I didn't hear Mr. Kirkland's statement.

The Court: Never mind, counselor, it wouldn't help you much, I am sure.

Q. Did Lena Mae Wilkins throughout these proceedings leading up to her giving you a written statement seem pretty anxious [69] for you take some action?

Mr. Kirkland: Objection. Immaterial.

The Court: It may have some tendency to show her intent or motive, therefore, the objection will be overruled.

Mr. Kirkland: Your Honor, I don't believe the motive would give any assistance to the court in this matter.

The Court: Technically speaking I agree with you. However, the objection is overruled. It is before the court only. Will you answer the question.

A. I would say she was quite anxious.

Q. You would say she was what?

A. Quite anxious to give me a signed statement. Wasn't that the question?

Q. Well, I don't know whether it was that or whether—did she—I think the question is: Did she seem pretty anxious for you to take some action towards putting Yokely in jail?

A. She was anxious to give me a signed statement, sir.

Q. Did she—would it be inappropriate for you to state that from observing Lena Mae Wilkins at



(Testimony of Joseph V. Sachen.)

this time the old saying came into your mind of  
“Hell hath no fury like a woman scorned”?

Mr. Kirkland: Objection. Immaterial.

The Court: Objection sustained.

Mr. Kirkland: Counsel has proven——

The Court: Mr. Kirkland, when the court has ruled in [70] your favor is there any reason why you continue to talk?

Mr. Kirkland: I apologize, your Honor.

The Court: Very well.

Q. Well, did you get the impression from observing Lena Mae that she was an angry woman determined, evidently set upon the course of revenge?

Mr. Kirkland: Object to it again, your Honor.

Mr. Dunn: Before you rule——

The Court: Objection overruled. You may answer.

A. I know she was angry. She seemed like she was angry with Yokely, yes.

Q. Did she seem appreciably aggravated and upset?

A. No, I wouldn't say appreciable angry or upset. She just gave me the signed statement and I told her that I wouldn't be able to do anything about it until I consulted the United States Attorney.

Q. You would say, I take it, therefore, she was appreciably aggravated and not appreciably upset?

A. I can't say that. I didn't know Lena Mae that well, to be truthful.

(Testimony of Joseph V. Sachen.)

Q. I want you to be truthful.

A. To be truthful I couldn't say how angry or upset she was. You see I had never met the girl before this time.

Q. Well, you feel you are capable, do you not, of simply looking at a stranger and observing abnormal behavior in that [71] individual?

A. Oh, I think I am, but I don't think I am an expert at it.

Q. But what?

A. I don't think I am an expert at it.

Q. Do you mean that you are equally inexpert at judging whether or not a person is drunk?

A. I am not an expert to know if a person is drunk or not.

Q. Is it your present testimony—I might be mistaken—when you previously testified Lena Mae was not drunk?

A. I previously testified that she was not drunk, but she had been drinking.

Q. Are you now testifying that possibly you were mistaken when you previously said she was not drunk?

A. I will say she wasn't drunk. I will still say she wasn't drunk.

Q. Do you also say that that statement of yours—now, I want your fair appraisal of it—is at best an inexpert opinion?      A. Well——

Mr. Kirkland: Your Honor, that calls for a conclusion. It is argumentative.

Mr. Dunn: I want to know what this witness thinks of his own testimony, your Honor.

(Testimony of Joseph V. Sachen.)

The Court: I realize that, but, Mr. Kirkland, this witness is an expert in the sense he has had a lot of experience and it is evidenced by virtue of his calling. [72]

A. I still maintain she was not drunk.

Q. I know you still maintain that and I assume you are going to continue to maintain it, but I would very much appreciate your answering this question if you feel you can fairly do so and the question is: In evaluating your own testimony to the effect that Lena Mae Wilkins was not drunk, are you willing to say that that testimony is at best an inexperienced opinion?

Mr. Kirkland: Object to the question, your Honor, as being immaterial. The witness has testified as to what he saw and as to whether or not he is an expert. How could he appraise it? I assume only an M.D. could be an expert in a matter like this.

Mr. Dunn: Your Honor, it is the same objection that has already been overruled.

The Court: You may answer the question. You know better in your own mind, Mr. Sachen, whether or not you are able to judge a person as to their sobriety.

A. I still maintain that Lena Mae Wilkins was not drunk.

Q. Would you consider that answer evasive

A. No, I wouldn't, sir. I do it to the best of my knowledge.

Q. Just one further question. As an agent of the Federal Bureau of Investigation if Lena Mae

(Testimony of Joseph V. Sachen.)

Wilkins was in fact drunk when that statement was given would you want it to be introduced into [73] evidence?

A. If Lena Mae Wilkins was drunk and I thought she was drunk and as an agent of the Federal Bureau of Investigation I would say she was drunk.

Q. Will you read that answer back to me, please.

(Thereupon, the reporter read the last answer.)

Q. I believe that, Mr. Sachen, but it doesn't answer my question.

The Court: I think it has been answered sufficiently to satisfy the court, Mr. Dunn.

Mr. Dunn: I beg your pardon.

The Court: It may not satisfy your mind, but it satisfies the court's mind. The only thing we are concerned about at this time is not his relationship with the F.B.I., but his testimony as to whether or not this defendant was drunk at that time and he has testified she was not. You may call your next witness.

Mr. Buckalew: Your Honor, could I ask the witness one more question?

The Court: No, the court feels you had a good chance, both yourself as well as through your co-counsel, therefore, your motion will be denied. You may call your next witness.

(Thereupon, the witness was excused and left the stand.)

Mr. Kirkland: I would like to call Mr. Jim Fitzgerald.

JAMES FITZGERALD

called as a witness for and on behalf of the Government, and being [74] first duly sworn, testifies as follows on

Direct Examination

By Mr. Kirkland:

Q. State your name, please, sir?

A. James Fitzgerald.

Q. And you are Assistant United States Attorney?

A. That is correct.

Q. Mr. Fitzgerald, on or about September 7 did you have occasion to see the defendant Lena Mae Wilkins in your office?

A. I don't know the exact date, but it was about that time I saw her on one occasion in my office in connection with the statement which she had given.

Q. Will you tell the court the condition of the defendant, that is, as to intoxication; whether or not she was intoxicated?

A. Well, she was not. If she was intoxicated—I will say this—that I didn't notice any symptoms or any indications whatsoever.

Q. Was she able to talk clearly?

A. She talked clearly enough when I saw her.

Q. And was she able to walk?

A. From what I saw of her she was able to walk without any indication of difficulty.

Q. Did you threaten her?



(Testimony of James Fitzgerald.)

A. No, I didn't take the statement. I asked her to read it again and to make any corrections, but as far as—— [75]

Q. And did she read the statement?

A. She read it right there.

Q. Did she make any corrections?

A. To the best of my recollection she did make several corrections in it.

Q. And it is your testimony that she was not drunk?

A. Not in any way that I could distinguish.

Mr. Kirkland: No further questions.

The Court: You may cross-examine, Mr. Buckalew.

Cross-Examination

By Mr. Buckalew:

Q. How long did you have occasion—I mean, how long did this last, this observation?

A. Oh, I'd say probably about 15 or 20 minutes in our office and probably 10 minutes down at the Commissioner's Court.

Q. Were you sitting at your desk?

A. Yes.

Q. Where was Lena Mae?

A. She was across the desk from me and I believe I gave her a pen at one time to make some initials and that was the closest I got to her.

Q. Did you smell alcohol on her breath? [76]

A. I didn't detect any odor of alcohol.

Q. Did you have occasion to observe Lena Mae

(Testimony of James Fitzgerald.)

Wilkins on a prior occasion when she testified in this court before the Honorable Judge Folta?

A. No, I didn't, but I have heard about it.

Q. Was Lena Mae Wilkins pretty violent the day you saw her as to her attitude toward Mr. Yokely?

A. No, she didn't appear to be unduly aggravated at him. She was willing to give the statement and I was surprised—I had heard so much about her and I was surprised at her appearance at that time. I mean, she seemed to be fairly lady like when I talked to her.

Q. You heard Mr. Sachen's testimony?

A. Yes, I did.

Q. Did you hear Mr. Sachen testify that she looked like she had been out all night?

A. When I saw her I didn't get that impression. Of course, I didn't see her at 9:00 o'clock in the morning. I saw her in the afternoon.

Q. About what time?

A. To the best of my recollection it was in the afternoon, oh, sometime after lunch—fairly early in the afternoon.

Q. Do you recall whether or not she was dressed in a dress or had slacks on?

A. I am not sure what she wore. I couldn't tell you, Mr. Buckalew. [77] It is my impression she had a dress on, but I may be wrong in that.

Q. Did you observe her eyes?

A. My observation was a general observation. I, at that time, was interested in examining her as to

(Testimony of James Fitzgerald.)

whether we should file a violation under the Mann Act and the reason I wanted to see her was because I wanted to satisfy myself as to her condition and as to what she was going to testify to and my general impression of her appearance was that she—I will say this, I had no idea or apparently she wasn't under the influence of either narcotics or alcohol.

Q. Did you call in the narcotics officer?

A. No, I am making that on my own estimate of what she was at that time.

Q. Did you ask Lena Mae if she took dope?

A. No, I did not.

Mr. Kirkland: Object to this line of questioning, your Honor.

The Court: Well, it may be relevant if she was under the influence of dope at that time.

Mr. Kirkland: The objection was as to alcohol. It doesn't make too much difference, but I hate—it is so time-consuming.

Mr. Buckalew: I didn't hear what Mr. Kirkland said.

The Court: Well, the objection is overrruled. You may [78] proceed.

Q. (By Mr. Buckalew): Did you ask her if she had been drinking? A. No, I did not.

Q. You went with her down to the Commissioner's Court? A. Yes.

Q. You got pretty close to her in Commissioner's Court? A. Yes.

(Testimony of James Fitzgerald.)

Q. You didn't smell alcohol on her in Commissioner's Court?      A. No, I didn't.

Q. Did you hear Judge Hartlieb ask her if she had been drinking?

A. No, I don't believe he asked that question. If he did I don't recall it, but it is my impression he did not ask that question. He made an examination as to whether she had signed the statement or not and whether she had read it. I mean, he took some trouble to establish that.

Q. Would you say that Lena Mae Wilkins had the shakes that morning?

A. If she did I didn't detect it.

Q. She spoke to you then, in your office, in an even voice?

A. She surprised me because I had heard so many stories about it and the impression she gave me was contrary to what I had heard.

Q. Did you see her later on that day?

A. I don't believe I saw her after she left the Commissioner's [79] Court.

Q. Do you know whether or not she had on high heels?      A. No, Mr. Buckalew, I don't.

Q. Did you observe her walking?

A. I believe I did.

Q. But you don't know whether she had on high heels?      A. No, I don't.

Q. You don't know whether she had on a dress or slacks?

A. No. I have the impression she had on a dress, but I may be wrong.

(Testimony of James Fitzgerald.)

Q. Do you think you could be wrong as to her state of sobriety?

A. No, because if there had been anything out of the ordinary, Mr. Buckalew, I think I would have noted it, but there wasn't anything out of the ordinary that I could see.

Q. How close did you get to this woman in Commissioner's Court?

A. I got fairly close to her.

Q. 2 feet? A. Within 2 feet.

Q. Were you facing her, face to face?

A. When she was talking to the Commissioner I was standing almost beside her.

Q. Did she talk and look at you when she said anything?

A. I would say I was standing beside her and she was talking to the Commissioner.

Q. And she never did face you and talk to you within the 2 feet? [80]

A. She may have. I am not sure.

Q. When she was in the Commissioner's Court you didn't observe anything unusual about her demeanor or appearance? A. Nothing at all.

Mr. Buckalew: Your witness, Mr. Dunn.

The Court: Mr. Dunn, do you have any questions?

Mr. Dunn: Just a couple, your Honor.



(Testimony of James Fitzgerald.)

Cross-Examination

By Mr. Dunn:

Q. Did you have occasion to talk to Lena Mae Wilkins just prior to her appearance before the Grand Jury recently?      A. Yes, I did.

Q. At that time did she make any statement to you concerning her state of soberness at the time this statement was given?

A. Yes, she did. She said she was drunk.

Q. She said she was drunk?      A. Yes.

Q. Did you reply to that statement?

A. Yes.

Q. What did you say?

A. I told her if there was any question about it I would have to say she wasn't drunk. [81]

Q. Did you say you would go before the Grand Jury and swear she was not?

A. I said if there was any question about it I would have to say she wasn't drunk because that was my impression.

Q. Did you tell her you would make that statement to the Grand Jury?

A. I don't recall that.

Mr. Kirkland: Your Honor, I object to this line. It is immaterial.

The Court: Objection sustained.

Q. (By Mr. Dunn): Well, your testimony then is, if I understand it correctly, that at the time you talked to Lena Mae Wilkins before her appear-

(Testimony of James Fitzgerald.)

ance before the Grand Jury you told her that you would say that she was not drunk?

A. I told her first of all I didn't think she was drunk. I told her if there was any question about her I would have to say she was not drunk.

Q. Now, is your present testimony to this effect, tell me whether or not I am stating it fairly, that if she was intoxicated at that time you didn't notice any indication of it?

A. That is essentially my position.

Mr. Dunn: No further questions.

The Court: Very well. You may step down.

(Thereupon, the witness was excused and left the stand.) [82]

The Court: You may call Mr. Hartlieb for one question only as to whether or not he asked the defendant whether she was drunk. Anything beyond that point would be cumulative and time-consuming and of no probative value.

### GORDON L. HARTLIEB

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

#### Direct Examination

By Mr. Kirkland:

Q. State your name, please?

A. Gordon Hartlieb.

Q. And you are United States Commissioner for the Anchorage precinct?

(Testimony of Gordon L. Hartlieb.)

A. That is true, sir.

Q. And you were serving in that capacity on September 7, 1954?      A. Yes, sir.

Q. And while acting as United States Commissioner was the defendant Lena Mae Wilkins brought before your court to sign an affidavit—or, to swear to the truth of a statement?

A. Yes, sir.

Q. Did you ask the defendant, or the witness at that time, Lena Mae Wilkins, if she was drunk?

A. No, I did not.

Mr. Kirkland: Thank you, sir. [83]

The Court: Any cross-examination?

### Cross-Examination

By Mr. Buckalew:

Q. Do you recall, Judge Hartlieb, if you asked her anything?

A. Do you want me to now testify as to what I asked her? Is that what you are asking me?

The Court: No, he asked whether or not you asked her anything.

A. I asked her if it was her voluntary statement. I asked her if she swore to it. I asked her if they were her initials. I asked her if it was her signature.

Q. Did she sign the statement in front of you?

A. No, she didn't, to the best of my knowledge. She had signed it and I pointed to the signature and asked her if it was her signature and if she had signed it.

(Testimony of Gordon L. Hartlieb.)

Q. You didn't see her sign the statement?

A. No, sir, I can't testify that I did.

Q. Did you smell liquor on her breath, Judge Hartlieb?

Mr. Kirkland: Your Honor, am I going to be allowed to ask these questions?

The Court: If you don't object the court can't rule.

Mr. Kirkland: I thought counsel understood. I was [84] beginning to get confused.

The Court: Well, the court is looking to you to object, counselor. I am not conducting the trial.

A. Do I answer the question?

Mr. Plummer: I object at this time. The witness was called for one purpose only.

Mr. Kirkland: I thought I had objected.

The Court: Objection sustained.

Mr. Buckalew: Nobody objected.

Mr. Dunn: Then, Your Honor, if Mr. Kirkland called the witness for just one purpose only we are willing to make Mr. Hartlieb our witness in order to examine him fully.

The Court: You may do so.

Mr. Plummer: The ruling is, as I understand it, the one question only was made by the court, not by the Government.

The Court: That is right. You may step down, Mr. Hartlieb. Thank you for coming.

(Thereupon, the witness was excused and left the stand.)

The Court: Do you have any more witnesses you want to put on?

Mr. Kirkland: I have some more. This is a hearing for the convenience of the court. I have the City Magistrate, Mr. George McLaughlin.

The Court: Well, I think he should come forward because we don't have corroboration from his office. [85]

### GEORGE M. McLAUGHLIN

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

#### Direct Examination

By Mr. Kirkland:

Q. State your name, please, sir?

A. George M. McLaughlin.

Q. And you are an attorney at law?

A. I am.

Q. And you are also the City Magistrate for the City of Anchorage?      A. I am.

Q. And you were acting in that capacity during the month of September?      A. I was.

Q. Mr. McLaughlin, did you have occasion to see the defendant in this case, Lena Mae Wilkins, in the company of Officer Pass, I believe, and Special Agent Sachen of the F. B. I.?

A. If I may expedite the matter—the only time that Mr. Sachen and Detective Pass were ever in my office is when they were accompanied there by a negress. I cannot say what date that was.



(Testimony of George M. McLaughlin.)

Q. And will you describe the appearance, that is, to intoxication of the defendant?

A. It is my distinct impression that the negress who was [86] accompanied by Detective Pass and Mr. Sachen was sober.

Q. Did the defendant swear to a complaint in your court?

A. Yes, the defendant did swear to a complaint in my court.

Q. What was that complaint, sir?

A. My recollection is that it was—I do not even remember the name of the man—it was a complaint for maintaining or pimping. It was against a pimp is my distinct recollection.

Q. You don't remember whether or not the defendant was there?

A. I cannot say who it was against, the person it was against.

Mr. Buckalew: Your Honor, I would like to ask that Judge McLaughlin's statement, "that it was against a pimp," that is, what he remembers about it, be stricken.

The Court: It may be stricken. It is before the court. It doesn't influence the jury.

Mr. Buckalew: I want to point that out to His Honor, because I have been in Judge McLaughlin's court.

The Court: Any more questions, counselor?

Q. Do you allow anyone to sign a complaint in your court in front of you that are intoxicated, drunk?

A. Never.

(Testimony of George M. McLaughlin.)

Mr. Kirkland: Thank you, sir.

The Court: You may cross-examine, Mr. Buckalew. [87]

Cross-Examination

By Mr. Dunn:

Q. Mr. McLaughlin, did you notice Mr. Kirkland's switching in the course of his questioning from your answers, "that there was a Negress before me," to his saying the defendant? Did you catch that? A. Yes, I heard it.

Q. Well, do you know who this Negress was?

A. I cannot say. The lady is familiar to me, but I cannot say that she was the lady specifically who was there on that day.

Q. And this sober person who came before you might have been any Negress in the Anchorage area, is that true?

A. That is quite true, but the only Negress who ever complained or signed a complaint in my office at any time in all the time that I have been Magistrate was a Negress who was accompanied by Mr. Sachen and accompanied by Detective Pass. Within my recollection that is the first and the last time that Mr. Sachen was in my office.

Q. Now, you stated, did you not—I want to see if these were your words—that it was your impression that this Negress, whoever she was, was sober?

A. That is so.

Q. Now, did you ever talk to me about the sobriety of this individual?

(Testimony of George M. McLaughlin.)

A. Yes, I did by phone and I think subsequently thereafter. [88]

Q. Do you remember what you told me then?

A. Within my recollection I told you that I would have to say she was sober; that she was not drunk.

Q. Let me ask you if you said this—see if this refreshes your recollection—did you tell me, “that if she was drunk you didn’t remember it”?

A. No, I may have used the expression indicating she was sober.

Q. You don’t remember saying that to me if you did say it?

A. I may well have said—what was the phrase that you suggested?

Q. I asked whether or not you can now remember saying to me, “that if this Negress was drunk you don’t remember it”?

A. I may well have said, “if she was drunk.” I certainly don’t remember it with the accent on the “don’t remember it.” It was my intention to indicate to you that she was sober.

Q. Do you think you might have made that statement?

A. Made the statement with a stress on the fact that I didn’t or don’t remember it?

Q. Could you have made the statement with the stress on, “I certainly”?

A. I question whether I would have. I can’t re-

(Testimony of George M. McLaughlin.)

call it, Mr. Dunn, but it was my intention, certainly, at that time to indicate she was sober.

Q. This Negress? A. Yes. [89]

Mr. Dunn: Thank you.

The Court: Mr. Buckalew.

### Cross-Examination

By Mr. Buckalew:

Q. Judge McLaughlin, do you recall who signed that complaint?

A. My recollection is that it was the Negress who accompanied these—either—both of the—Sachen and Pass. I couldn't be sure. Detective Pass may well have signed it. I haven't checked my records to determine.

Q. Did you interrogate this Negress about the facts of the complaint?

A. My recollection is that I did.

Q. How long did you interrogate her?

A. My recollection is it was about a minimum of 5 minutes.

Q. You talked to her for 5 minutes but you are not sure you could identify this particular Negress at all? A. That is right.

Q. That was in your office down at the court-house?

A. No, that was in my office in the First National Bank building.

Q. Do you know whether or not this Negress was seated across from your desk? [90]

(Testimony of George M. McLaughlin.)

A. It is my distinct recollection she was seated across from my desk, Mr. Buckalew.

Q. You didn't observe anything unusual about this particular woman?

A. Nothing that I can recall.

Q. Do you recall her telling you that she wanted to get somebody by the name of Yokely in jail as quick as possible?

Mr. Kirkland: Object to the question. Immaterial.

The Court: The only materiality it could have is whether or not this may have probative value as to her sobriety.

Mr. Buckalew: Your Honor, I don't want to say this, but His Honor——

The Court: The objection is overruled. You may answer.

Mr. Buckalew: I was going to say——

The Court: Objection overruled. Go ahead. There is no use in making a speech after the court has ruled in your favor.

A. Mr. Buckalew, I can't recall her saying specifically it was a Mr. Yokely. I can remember that she was quite anxious to have this warrant issued against some person.

Q. Did you say you were going to get that person in jail right now?      A. I can't recall.

Mr. Kirkland: Your Honor, I object to that. [91]

The Court: Objection sustained.



(Testimony of George M. McLaughlin.)

Q. But she was anxious to get this person in jail?

The Court: He so testified, counselor.

A. It is my impression the lady was quite fearful of one or two things, I recall.

Q. She was visually upset, wasn't she?

A. Yes, you would call it visually upset if vehement is being visually upset. She was visually upset.

Q. Now, if she was vehement what did you observe of her demeanor that made you reach the conclusion she was vehement?

A. Vehement in the——

Mr. Kirkland: Object to the question.

The Court: Objection sustained. It hasn't anything to do with whether she was drunk or sober.

Mr. Buckalew: It might, Your Honor.

The Court: Objection sustained.

Q. Was she shaky?

A. My recollection is no. As I recall, Mr. Buckalew, there was nothing that indicated to me she was drunk or under the influence.

Q. Did you observe her walk, Judge?

A. Vaguely, I must have observed her walk because I was present—it is not a large room and I would have seen her enter and I would have seen her leave.

Q. It didn't occur to you when you brought that woman in there, [92] "here is another drunk I am going to throw in jail," did it? Did that occur to you?

A. No. As a matter of fact, my recollection is

(Testimony of George M. McLaughlin.)

that the lady was under arrest. My recollection is that she was a complaining witness or at least to provide the testimony on which basis of a warrant would issue.

Q. Did you think it unusual they should bring a complainant in there?

Mr. Kirkland: Objection.

The Court: Objection sustained.

Mr. Buckalew: Your Honor, here is the problem Mr. Dunn and I both have: These witnesses can only remember certain things. I'd say all the witnesses are hostile and I am not going to ask any more questions.

The Court: Very well. The court has to rule upon the questions of admissibility of evidence as to the relevancy, the competency and materiality and the court rules rather readily, as you noticed, from time to time because it should be very obvious that it is not relevant, material or competent.

Mr. Buckalew: There is only one thing I want to point out to the court. We are having a most difficult time finding out anything.

The Court: Well, counselor, you have the right to call your own witnesses.

Mr. Buckalew: We are going to do that, Your Honor. [93]

The Court: Very well. You may step down. Thanks for coming.

(Thereupon, the witness was excused and left the stand.)

The Court: Does the Government rest as to this portion of the proof?

Mr. Kirkland: If the court is desirous——

The Court: No, the court is not.

Mr. Kirkland: The Government rests on this point then.

The Court: What is your pleasure—would you like a recess? The court reporter must change paper, therefore, the court will stand in recess for 10 minutes.

(Whereupon, at 4:05 o'clock p.m., following a 10-minute recess, court reconvenes, and the following proceedings were had:)

The Court: Mr. Buckalew, you may call your first witness.

Mr. Dunn: Call Mr. Richard Burge.

The Court: Mr. Burge may come forward and be sworn.

#### RICHARD W. BURGE

called as a witness for and on behalf of the defendants, and, being first duly sworn, testifies as follows:

The Court: Now, I point out to you the court will not permit both counsel to—that is, one to have direct and the other [94] have a cross on this.

Mr. Dunn: All right, Your Honor.

#### Direct Examination

By Mr. Dunn:

Q. Will you state your name, please?

A. Richard W. Burge.

(Testimony of Richard W. Burge.)

Q. Mr. Burge, do you know the defendant, Lena Mae Wilkins? A. Yes, I do.

Q. How long have you known her?

A. Approximately 2 years, year and half to 2 years.

Q. Have you ever seen the defendant—by the defendant I am referring only to the defendant Wilkins—have you ever seen the defendant drunk?

A. Yes, I would consider her drunk.

Mr. Kirkland: Object unless it is preliminary to the certain day.

The Court: Is it preliminary?

Mr. Dunn: It is preliminary, Your Honor.

The Court: Go ahead. Objection overruled.

Q. Well, now throughout this 2-year period have you observed her in both a sober and drunk condition? A. I have, Yes,

Q. And have you observed her frequently enough that you feel that you can tell when she is sober and when she is drunk?

A. I have by her actions, yes.

Q. Well, now there has been appreciable testimony elicited here, Mr. Burge, concerning the time at which a statement was taken [95] from the defendant Wilkins, a statement given to an officer Pass and F.B.I. Agent, Mr. Sachen, and testimony to the effect that—that statement was sworn to before the United States Commissioner. Now, did you see the defendant Wilkins that same day? Do you know?

(Testimony of Richard W. Burge.)

A. Well, I didn't read the statement and I——

Mr. Plummer: Object to the question. He has not specified what day it was yet.

Mr. Dunn: I don't think the witness knows the date, Your Honor. That is the reason I asked the witness if he saw the defendant Wilkins on the same day the defendant allegedly gave this statement. I am trying to tie it to that day although not a day.

Mr. Plummer: How can you establish that if he wasn't present when the statement was given?

Mr. Dunn: I can't. The only way I can establish it is by asking him questions.

The Court: The objection is overruled. This is before the court and we are only trying to get at the facts as quick as possible.

A. Well, Mr. Dunn, I will answer your question in this manner. The day that Lena Mae was in the Commissioner's Office, the day that Yokely was arrested by Mr. Sachen and Mr Pass, I was present in the Commissioner's Office and I saw Lena Mae in the Commissioner's Office. I was present in East Chester [96] when they put Yokely in the car and brought him to town. Now, the exact date and exact time I am not aware of to the extent that I would swear to the time.

Q. But you did—excuse me.

A. But I do know that it was the day that the Commissioner swore to some statement and asked her if she know what was in the Statement and he had her raise her right hand, asked her if she knew what was in the statement and if it was true and



(Testimony of Richard W. Burge.)

some things to that effect, but I couldn't hear it all because I was tending to some other business in the Commissioner's office.

Q. Can you answer this question. Did you see the defendant Wilkins on the day that the defendant Yokely was arrested? A. Yes, sir, I did.

Q. Well, now where did you first see the defendant Wilkins that day?

A. Well, I met her and Officer Pass and Agent Sachen and United States Attorney Fitzgerald coming out of the United States Attorney's office.

Q. And did you speak to the defendant?

A. Well, Mr. Pass came out first and I spoke to him and he spoke to me. She came out second and she said to me, "Hello, Mr. Burge," and I spoke, I said, "Hello, Maggie."

Q. She said, "Hello, Mr. Burge"?

A. Yes, she did. [97]

Q. Do you attribute any significance to her greeting, "Hello, Mr. Burge"? A. Yes, I do.

Q. What significance?

A. Well, on several occasions——

Mr. Kirkland: Object to it, Your Honor, as to what he attributes.

The Court: Objection sustained.

Q. Well, over this period of 2 years that you have known Lena Mae Wilkins have you gotten to know her well enough to use first names?

A. Well, she calls me Richard, but generally when I am in a bar and if she has been drinking or having some misunderstanding with different ones

(Testimony of Richard W. Burge.)

in the bar and I speak to her she would address me formally then "Mr. Burge."

Q. Is this or is this not true that when the defendant Wilkins is drinking rather heavily she calls you Mr. Burge and otherwise she calls you Richard?

A. That is a fact, yes, sir.

Q. And she called you Mr. Burge when she stepped out of the District Attorney's office?

A. Yes, she did.

Q. Now, when you first saw her there, that is, stepping out of the District Attorney's office—

Mr. Plummer: I object to this line of questioning. He [98] can ask the witness to state as to her sobriety, intoxication. What he calls her on March 3, or April 2 has no probative value whatever.

The Court: How does it tend to prove the defendant was drunk or sober?

Mr. Dunn: By the testimony of the witness here, Your Honor. So far as I see it the witness has testified that when the defendant is drunk she calls him Mr. Burge and when she is sober she calls him Richard and on this particular day she called him Mr. Burge. It is merely one bit of the evidence toward drunkenness. I am going on. It is not all I have.

Mr. Plummer: My contention is, Your Honor, if he wants to know what this witness thinks was the condition of the defendant on that day as to sobriety he can ask this witness.

Mr. Dunn: I am going to ask him.

The Court: I feel the first question was more or

(Testimony of Richard W. Burge.)

less preliminary, but the objection will be sustained as to any further questions along the same line so finely drawn and it doesn't have much probative value, as you may well understand, Mr. Dunn.

Q. (By Mr. Dunn): Where were you going when you saw the defendant Wilkins coming out of the District Attorney's office?

The Court: Mr. Dunn, what relevancy does that have?

Mr. Dunn: Your Honor, it is a preliminary question. What I am trying to bring out is this: He was going a certain [99] place and in the course of that he walked behind her and then I am going to ask what he saw when he walked behind.

The Court: Would you please get to the point. I am not trying to shut you off, but it seems like you are talking the long way around.

Q. Did you follow the defendant Wilkins down the hall in the Federal Building?

A. Yes, I did.

Q. What did you observe with respect to the way in which she walked?

A. Well, I would say it wasn't her usual actions to the extent that in the course of time of knowing the defendant her actions are quite a bit different when she is drinking.

The Court: May I interrupt you, please. Does it make any difference if she is—how she walked?

A. Well, generally when she is drinking she is mad.

The Court: Well, was she mad on this occasion?

(Testimony of Richard W. Burge.)

A. Yes, sir, she was and I didn't realize it as much as I did when I saw her later.

The Court: How do you know she was mad on this occasion?

A. Because of the vile and abusive language she was using in front of the officer. The officer tried to shut her up and she wouldn't do it.

The Court: Was that in the hall here?

A. No, sir, this was about 30 minutes later. [100]

The Court: This is after that?

A. Yes, sir.

The Court: I see. Thank you. You may proceed, counselor.

Q. (By Mr. Dunn.): Now, did you see the defendant later after observing her in the Commissioner's office?

A. Not later than 30 minutes after I saw her in the Commissioner's office.

Q. And how was she acting then?

A. Quite abusive, I would say.

Q. Was she acting in a drunken or sober manner?

A. Well, she was talking quite a bit. She was loud. She was using quite a bit of profanity and Mr. Pass asked her to keep quiet and his authority had no effect on her. She just kept right on talking and cussing.

Q. Now, in your opinion, Mr. Burge, from observing the defendant throughout your acquaintance with her, the 2 years, when you saw her on this particular day was she drunk or sober?

A. Well, in my honest opinion I think she was

(Testimony of Richard W. Burge.)

under the influence of something. I couldn't say. I didn't smell whiskey on her because I wasn't exactly close to her, but it was something. She wasn't normal.

Q. Well, would you say her appearance was abnormal?  
A. It was, yes. [101]

Q. That abnormality was caused by drink? Was she drunk or sober, assuming it was caused by drink?  
A. She was drunk.

Q. Would you say she was obviously drunk?

A. From her actions, yes, sir. A person would have to be drunk to disrespect people that use the disrespect she was using. I would say she would have to be under the influence.

Q. Were there a number of officers around the defendant down in the Flats after she left the Commissioner's office?

A. Well, at one time, yes, sir. To—if I may make myself explicit.

The Court: You may.

A. I drove down to East Chester Flats across the street from Yokely's home where she had been residing and I saw Officer Pass' car, City car there. I saw Mr. Sachen standing in the doorway so I walked over and I said to him, "Are you arresting Yokely?" He said, "Yes," and I said, "Well, my interest is the bond part of it. Could you tell me about what the bond is going to be?" and he said, "Well, I don't know. I couldn't tell you the charge. I can tell no one the charge, but I have 2 charges and I think Mr. Pass has a couple of charges against him. The bond will be pretty high." And I said,



(Testimony of Richard W. Burge.)

“Well, I will see about securing a bond for him.” At this time there was only the 2 officers there and I didn’t get in the house, but I could hear Mr. Pass telling [102] Yokely to hurry up and come out and Mickey was in the hallway there someplace talking quite loud. I refer to Mrs. Wilkins as Mickey. I stood there and talked with Officer Sachen for awhile about the case, the bonding part of it, and Yokely came out and Officer Pass was behind him, I think, and then Mickey came out and Officer Sachen walked over to the car and opened the back door—in the meantime they were trying to get Yokely away from the house and he was telling them he didn’t want to leave unless they carried her away and not leave her there with his wife because his wife was sick and she was loud and talking and drinking and she might aggravate and cause his wife to get in trouble by being nervous. Officer Sachen told him as far as he was concerned that was her home and she said she had been living there, it was her castle or something to that effect. So Mrs. Wilkins at this time was being pretty vulgar to the extent of being abusive, using profane language and she was talking directly to Yokely about the condition she was in or something to that extent and he was trying to put her out or something, so she walked up behind him—he was behind Officer Sachen and Officer Sachen was headed to the car—she was being abusive to the extent she was calling him foul names and he turned around and hit her.

(Testimony of Richard W. Burge.)

The Court: When you say "he"—

A. Yokely. [103]

The Court: I see. Thank you.

A. So Officer Sachen caught him from the rear by the arm and Officer Pass said, "Well, there is another charge against you." I was standing near the officer and I said, "Sure is, but it was aggravated assault." I said, "If she talked to you that way you would probably hit her yourself." So I think Officer Pass at this time decided to call some City officers down to move her, or something. So they stood around there awhile, waited until the City car came down with 2 uniformed officers and a plainclothesman—I think the man was Mr. Hallowfield, I think that is the detective's name—anyway, the detective talked with Mr. Pass for a few minutes. Mr. Sachen and Mr. Pass put Yokely in the car and left. The 2 uniformed officers went into the house with Lena Mae. In the meantime this plainclothes officer walked over to me and said, "What is it all about, Richard"—

The Court: No, I am not interested in what happened between you and the officer. I am interested in what happened between the defendant Wilkins and other people.

A. That is what I was trying to—

The Court: If you will just get right to the point.

A. Anyway, she went into the house with these 2 officers. She was cussing and raising sand so I was asked at this time what was wrong with her,

(Testimony of Richard W. Burge.)

was she under the influence of narcotics or whiskey and I said, "I don't know. She is under the [104] influence of something, don't you think?" So then she came out and was talking and they got in the Officers' car and carried her away in the car.

Q. Was that one of the officers that asked you whether or not she was under the influence of narcotics or drunk or what was wrong with her?

The Court: Yes, the court understood that as such.

A. Yes, that was one of the officers that came down. Officer Pass called for them to come down and move her away from there.

Q. In your opinion, from what you know of Lena Mae Wilkins when she is sober and when she is drunk, was she at the time you observed her on the day that Yokely was arrested responsible——

Mr. Kirkland: Object to the question, Your Honor. It has already been answered.

The Court: Well, the only question is this; Whether or not she was drunk or sober at that time and as to the degree the court is going to have to determine that from the testimony. It is asking for a conclusion.

Mr. Dunn: Will the court permit this question? In your opinion was she so drunk she was irresponsible?

The Court: You may answer it.

Q. In other words, would you——

The Court: Just a moment, please. Let the witness [105] answer.

(Testimony of Richard W. Burge.)

A. I have observed her drinking and being refused drinks in bars. Sometimes the bartenders wouldn't serve her any more because they would say, "Mickey, you are getting abusive now." Some of her actions has caused me to come to the conclusion that when she is drinking she is really not responsible for some of the things she says and does and if the court may allow me I will give the reason for why my opinion is of that.

The Court: Well, you may do so.

A. Well, I don't think a person that is in their right mind would say the things she did to Judge Folta.

The Court: Well, excepting this, I am not concerned about what she said other than on that day. I am not concerned about what she said to some other judge or on some other occasion.

A. That is the only way I can form an opinion, is by some of her actions. When I have reason to believe she has been drinking quite heavily some of the things she does I really don't think she is rational.

Q. (By Mr. Dunn): Mr. Burge, was she acting the same way on the day in question as she was acting before Judge Folta?

A. I wasn't up here in court.

Q. I am sorry, I thought you were.

A. I merely know the results of that. [106]

Q. On the day in question was the defendant Wilkins visually upset, nervous, irritated, excited?

A. She was quite irritated, yes, sir.

(Testimony of Richard W. Burge.)

Mr. Dunn: No further questions.

The Court: You may cross-examine, Mr. Kirkland.

### Cross-Examination

By Mr. Kirkland:

Q. Mr. Burge, did one of the defendants in this case, Mr. James Taylor Yokely, testify before the Grand Jury which cleared you of a second degree murder charge?

Mr. Buckalew: Object on the grounds it is immaterial.

The Court: We are not questioning at this time on any relationship other than sobriety or lack thereof of the defendant Wilkins.

Mr. Kirkland: This would go towards the credibility of this witness to show bias, friendship and favor.

The Court: Well, a certain amount of that, but how would that affect the defendant Wilkins?

Mr. Kirkland: They are both co-defendants, Your Honor. If the testimony of the defendant Wilkins is knocked out, obviously there would be none against Mr. Yokely or the case against Mr. Yokely would be so greatly weakened anyway. [107]

The Court: What is your position, Mr. Buckalew?

Mr. Buckalew: I would object to it on several grounds. On the first ground I object to the form of it. On the second ground I object to it because the Grand Jury didn't indict Mr. Burge for murder



(Testimony of Richard W. Burge.)

and if this man was one of the witnesses that wouldn't show anything because the Grand Jury didn't indict Mr. Richard Burge for murder. That shows the Government didn't have enough to indict this man.

The Court: In that respect it does have some probative value as to relationship as Mr. Kirkland indicated. On the other hand, I feel the form of the question is improperly stated, therefore, the objection will be sustained on that ground.

Mr. Dunn: Your Honor, may I make an observation?

The Court: No, the court has ruled.

Q. (By Mr. Kirkland): Mr. Burge, did you serve drunks in your bar?

Mr. Buckalew: Object to that, your Honor.

The Court: What is the relevancy, counselor?

Mr. Kirkland: Your Honor, the witness testified as to seeing the defendant in his bar under certain conditions and when he saw her in Commissioner's court she was acting the same way.

The Court: Excepting this, your question is, have you served liquor to drunks in your bar?

Mr. Kirkland: Very well, your Honor. [108]

The Court: You better tie it up with the case.

Mr. Kirkland: If the witness says no then obviously his testimony couldn't be correct about serving Lena Mae Wilkins whiskey.

The Court: There is no testimony he did serve her whiskey or that she was even in his bar while she was drunk.

(Testimony of Richard W. Burge.)

Mr. Kirkland: I don't wish to argue with the court, but on direct examination he testified he had observed her in his bar when she was drunk and getting mad and acting up. That is when she had to call him Mr. Burge rather than Richard.

The Court: I didn't understand it as such, counselor. The court recalls that he testified the bartenders have refused to serve her liquor, but not in his bar. Is that correct?

A. That is correct.

Q. (By Mr. Kirkland): Mr. Burge, then you did not testify that in your bar when she was acting like this she had to call you Mr. Burge?

A. No, sir, I did not testify to that fact. I testified, Mr. Kirkland, to the effect that I had observed and I have observed her in bars drinking and I have seen her being refused drinks because of her abusive actions towards the bartenders.

The Court: That is as the court recalls it.

Q. And in these other bars you would make her call you Mr. Burge?

The Court: That is not the testimony, counselor, again. [109]

Mr. Kirkland: Well, your Honor, obviously if it wasn't in his bar, it would have to be in someone else's bar.

The Court: Except this, you stated that he made her call him Mr. Burge. That is not the testimony.

Mr. Kirkland: Your Honor, on the defendant's direct examination he testified she would call him

(Testimony of Richard W. Burge.)

Richard on some occasions and Mr. Burge on other occasions and his testimony was when she was in this condition she called him Mr. Burge; that he made her call him Mr. Burge.

The Court: Mr. Burge, did you say you made her call you Mr. Burge?

A. No, sir.

The Court: Counselor, I am afraid you are in error on that point.

Mr. Kirkland: I may be, your Honor.

Mr. Dunn: Your Honor, we will submit to the record on the point.

The Court: Very well. Objection sustained. You may ask another question if you wish.

Q. (By Mr. Kirkland): Have you ever been convicted of a crime, Mr. Burge?

Mr. Buckalew: Object on the ground it is immaterial.

The Court: Objection overruled. You may answer.

Mr. Dunn: Your Honor——

The Court: Objection overruled. The court doesn't want [110] to hear further argument.

Mr. Dunn: If the court please, I certainly don't want to antagonize the court, but I think when this witness' testimony is to go to my client, too, I ought to be heard before the court rules.

The Court: I point out to you this is so academic. This question has come up before the court many times and it doesn't leave any doubt. Now, if you had some meritorious reason I would be glad to

(Testimony of Richard W. Burge.)

hear you, counselor, but it is so academic there shouldn't be any doubt.

Mr. Dunn: How does your Honor know what I have is not meritorious until you have heard it?

The Court: You can't object to something else other than what is before the court. The question was whether or not he had ever been convicted of a crime.

Mr. Dunn: Then I simply ask that the record show that I object to the court ruling prior to hearing counsel for the defendant Wilkins.

The Court: All right, let the record so show. You may answer.

A. Your question, Mr. Kirkland?

Q. Have you ever been convicted of a crime?

A. I have pleaded guilty to several crimes. I was guilty of, yes, sir—misdemeanors.

Q. And were any of these—the defendant Yokely in this case, a [111] co-defendant with you and pleaded guilty also with you in some of these that you are discussing?

Mr. Dunn: Objection, your Honor. It is an improper question. It can't go to the credibility of this witness and Mr. Yokely's reputation for truth and integrity is not in issue before the court at the present time.

The Court: Excepting this: I point out to you, counselor, and this is an academic rule of law and evidence, that counsel has a right to show the interest, if any, the witness has as pertains to these

(Testimony of Richard W. Burge.)

defendants. They are so interrelated, therefore, the objection is overruled. You may answer.

Mr. Buckalew: Your Honor, could I make an objection?

The Court: No, the court has ruled on that, counselor.

Mr. Buckalew: If I had an additional and new objection?

The Court: Yes. You may.

Mr. Buckalew: I want to ask the United States Attorney if he has verified records of this man's convictions with him here in court.

Mr. Kirkland: I contend, your Honor, I don't have to unless the defendant denies it then if I do not produce them at that time his Honor would have to believe the defendant. They are right down in the Commissioner's office.

Mr. Buckalew: I take the position that the witness has answered truthfully. He said he had been convicted of misdemeanors. That is all he can ask him. [112]

The Court: Objection overruled.

Mr. Buckalew: Could I ask your Honor this?

The Court: Yes, you may.

Mr. Buckalew: Does your Honor think that—and this is purely academic—if this witness and my client were convicted on the same charge of gambling, do you think that that would show any interest as to this witness and to my client?

The Court: It would have some probative value



(Testimony of Richard W. Burge.)

which is recognized by Wigmore. Have I answered your question?

Mr. Buckalew: I guess you have, your Honor.

The Court: Very well. You may answer.

Mr. Buckalew: I can't follow the court.

The Court: Well, the court will be glad to show you authority on that if you are in doubt. You may answer.

A. Well, I was arrested in Anchorage, in 1950, I think, for gambling at the V.F.W. private club and James Yokely was also arrested at that time and Mr. Buckalew was Assistant District Attorney at the time.

The Court: Thank you.

Q. (By Mr. Kirkland): Mr. Yokely is your friend, is he not?

A. Yes, I consider him my friend.

Mr. Kirkland: No further cross.

The Court: Any redirect?

Mr. Buckalew: No redirect, your Honor. [113]

The Court: Very well. You may be excused then.

(Thereupon, the witness was excused and left the stand.)

The Court: At this time the court will have to continue the trial. Mr. Hale, will you call the jurors back, please.

(Whereupon, the bailiff recalls the jury, the jury returns to the courtroom, and the following proceedings were had):

The Court: Can counsel come in tomorrow morning at 9:30?

Mr. Dunn: Your Honor, before answering that may I talk to the other witnesses that I have brought to court?

The Court: You may.

Mr. Dunn: Your Honor, counsel can be in court at 9:30 in the morning.

The Court: Thank you very much. Ladies and gentlemen of the jury, the matter which was to be determined out of the presence of the jury has not been concluded at that time and it doesn't appear to the court that it can be concluded for quite a little time; therefore, I think the court would be safe in excusing you until 10:30 tomorrow morning, although the court will reconvene tomorrow morning at 9:30. Now, do counsel for the Government or for the defendants believe it will be concluded before that time? How long do you think it will take you to put on your case reference this problem we are concerned with at the [114] present time, Mr. Buckalew?

Mr. Buckalew: Your Honor, we might call three more witnesses. It will probably take Mr. Dunn and I—we are just guessing—approximately two hours.

The Court: Well, I don't like to have the jurors wait around.

Mr. Dunn: Your Honor, if the jurors—may I make a suggestion?

The Court: You may.

Mr. Dunn: If the jurors are first admonished

not to appear in court so as to hear any parts of these proceedings, I would think that if they were requested to return at 11:30, there would be very little time wasted.

The Court: Well, we can't let this go on ad infinitum.

Mr. Kirkland: If the court please, could I make a suggestion?

The Court: You may.

Mr. Kirkland: Possibly the court could take over and interrogate these witnesses because this is for the benefit of the court and if the court takes over and does all the interrogation, this matter, I am certain, would be completed much sooner than at the present rate.

The Court: If it goes on inordinately, the court will have to—doesn't have any choice in the matter. On the other hand, I don't want to cut counsel off. I would think, ladies and [115] gentlemen of the jury, it could be pretty well summarized by 10:30. Therefore, you are now excused to report tomorrow morning at the hour of 10:30 a.m. The court will remain in session for other business. Again I must admonish you not to discuss this case among yourselves nor permit others to discuss it with you; that includes counsel, marshals, or anybody else, and if anybody does discuss this with you, or attempts to discuss it with you, would you report it to the court forthwith. You may now be excused to report tomorrow morning at 10:30 a.m., and the court will remain in session to take care of other business.

(Thereupon, at 4:30 o'clock p.m., December 21, 1954, this case was adjourned to the next morning, to be resumed at 10:30 o'clock a.m., December 22, 1954.) [116]

Court is convened at 9:30 o'clock a.m., December 22, 1954. At the request of the court the Deputy Clerk calls the roll of the trial jury, and each answers present to his or her name, whereupon the following proceedings were had:

The Court: Now, the trial was continued until this time in order that we could put on additional testimony concerning the admissibility of the statement at this time. The Court would ask the Clerk if I may see the same and read the same.

The Clerk: I don't have it, your Honor.

The Court: Mr. Sachen, do you have the statement?

Mr. Sachen: Yes, I do, sir.

The Court: May the court see it? (Statement was handed to the court.) What is the opinion of counsel for the Government as to what type of statement this is? Is it just a regular statement?

Mr. Kirkland: Introducing it as admission, your Honor.

The Court: Well, is the admission a statement or a confession?

Mr. Kirkland: Beg your pardon?

The Court: Is it an admission, a statement, or a confession?

Mr. Kirkland: It is an admission. It is a statement and admission as far as that goes.

The Court: Are you stating that it is not a confession [118] likewise?

Mr. Kirkland: Yes, your Honor, I am stating that is not a confession.

The Court: When does it fail to meet the requirements of a confession?

Mr. Kirkland: Wherein does it fail to meet the requirement of a confession?

The Court: Yes.

Mr. Kirkland: Through the particular crime that is charged here. There is no admission whatsoever as to an intent to conspire as to the conspiracy.

The Court: Very well. You may then call your next witness, Mr. Buckalew or Mr. Dunn.

Mr. Buckalew: Your Honor, could I approach the bench, please?

(Thereupon counsel for the defendant, James Taylor Yokely approached the bench and the following discussion was had):

Mr. Buckalew: Your Honor, I am kind of afraid to come up here this morning, but I don't really—don't know whether I'm coming down with the flu. I wanted to see the doctor at 9:30. I didn't get a chance to see him. I don't really feel like I can be alert enough to protect my client and I was afraid of the—I went home and went to bed last night, took fruit juices, and frankly, I'm dizzy and weak at my knees. I haven't seen a doctor and my chest is congested; my throat is sore; and my head is just [119] spinning around.

The Court: Well, the court wants to be fair with



you, but I point out to you there's been days I could scarcely hold up my head. I've been on the bench working because of the press of business here.

Mr. Buckalew: I will go on, but I want to see a doctor at noon.

The Court: I certainly haven't any objection to that.

Mr. Kirkland: Judge, in the event he does see a doctor and the doctor advises he to go home to bed, I would certainly like permission to call some witnesses from out of town just to introduce matters of record in the event——

Mr. Buckalew: I am not going to—I will fight it as long as I can, Judge, but the only thing that scares me, I felt like this once before and I kept going and ended up with pneumonia.

The Court: Well, of course the court doesn't want to force you into something like that.

Mr. Buckalew: That scared the devil out of me.

The Court: Ordinary headache or sickness—I tell you—this court—I haven't missed a day since I have been on the bench.

Mr. Buckalew: I am going to see Dr. St. John at noon. I will go until noon. I just don't want to be in contempt of the court if the doctor advises me I should go to bed. [120]

The Court: That is fair enough on that basis, but I want to be sincere because if we have a lot at stake—we have a lot of Government money being spent here.

Mr. Buckalew: I know the position the court was in getting this thing to trial and I didn't know whether I should say anything to the court or not.

The Court: Well, you are on record now, and I—of course, I will have to be understanding, counsel, in respect thereto. Thank you for calling it to my attention:

Mr. Dunn: I would like to call Mr. Albert Dungee to the stand.

The Court: Very well. He may come forward and be sworn.

### ALBERT J. DUNGEE

called as a witness on behalf of the plaintiff, and being first duly sworn, testifies as follows:

Mr. Dunn: I wonder if it would be appropriate, your Honor, to ask the bailiff to be on the alert for jurors that might come into the courtroom.

The Court: I am sure he will.

### Direct Examination

By Mr. Dunn:

Q. Will you state your name, please? [121]

A. Albert J. Dungee.

Q. Mr. Dungee, are you acquainted with the defendant, Lena Mae Wilkins? A. Yes.

Q. Did you see Lena Mae Wilkins on or about September 7, 1954?

A. Yes, to my knowledge.

Q. Now, did you see her the day that James Yokely was arrested down in Eastchester Flats?

A. Yes.

Q. Will you please—first, what is your occupation, Mr. Dungee?

(Testimony of Albert J. Dungee.)

A. The bartender at H&M.

Q. Which is in Eastchester Flats?

A. Yes.

Q. Where is H&M with respect to the defendant Yokely's house?

A. Across the street.

Q. Can you see the front of that house from the H&M—from the bar there where you are normally working?

A. At the bar you can look out the big window there right across the street to their house.

Q. Please tell the court the conditions and circumstances under which you saw Lena Mae Wilkins on the day that Yokely was arrested.

The Court: Just a moment, please, counselor. I am not interested in the entire day. The only thing I am concerned about is around about 10:30 a.m.

Q. What time did you see her? [122]

A. She came into the place between 9 and 10 o'clock that morning.

Q. And tell the court what you saw at that time, and any conversation that took place between the two of you.

A. At the time she came in she ordered a drink and get me a hard time, so I wouldn't serve her any drink and she sat there talking to herself and I was doing my cleaning that morning.

Q. What did you say to her in refusing to serve her a drink?

A. When she came in and asked for a drink I told her, "You look like you've had enough," and I wasn't going to give her no more.

(Testimony of Albert J. Dungee.)

Q. Was Lena Mae Wilkins drunk when she came into the H&M that morning?

A. Well, yes, as far as I'm concerned—to my knowledge, she was drunk.

Q. When you refused to serve her a drink, did she accept your decision, or did she argue with you? What was her attitude?

A. She kept arguing with me to give her the drink. I didn't pay her no mind. I just kept on doing my work.

Q. Did you see her walk?

A. When she came in the place—I was in the kitchen working at the time she came in and sit right down—right where the telephone is—corner of the bar.

Q. Did you hear her talking?

A. Yes, sir. When I wouldn't serve her, she was mumbling to herself there and I didn't pay no attention what she was [123] mumbling about.

Q. Did she make any telephone calls?

A. Yes, she did make a couple of calls, but seemed like she couldn't get—her party wasn't right there. She hung up and fussed with the telephone company.

Q. Did you hear her talking on the telephone?

A. Well, the last time she called her number, and I paid attention. She—the person she was wanting to talk to, and she said she wanted to speak to Chief Miller—I heard her say because I was in the kitchen doing my work. That is all I heard.

(Testimony of Albert J. Dungee.)

Q. Could you overhear her voice sufficiently to know whether or not her voice was normal?

A. I heard her talking both times, and when she was at herself and when she was drunk, and she—at this particular morning, she wasn't at herself.

Mr. Plummer: I object to the question and answer because there has not been sufficient showing that this man has known her previously to know whether she was normal, to know how she did act.

The Court: I thought he just testified—as I recall—that he had known her before.

Mr. Dunn: I don't know whether he did or not. I will establish that point if you are interested in it.

The Court: Let's check the record so that [124] point——

Mr. Dunn: I think Mr. Plummer is correct.

The Court: Excepting this—he had seen her before. Let's check the record, please.

Mr. Plummer: It might take time. I understand he had seen her on another occasion. He had testified two times.

The Court: That is right. That is the point I was ruling on.

Mr. Plummer: I wonder if that is sufficient, even alleging she was either drunk or sober on this occasion.

The Court: Of course, I point out the question of degree as to its probative value, and one other case. The court can't give too much credence——



(Testimony of Albert J. Dungee.)

Mr. Dunn: Your Honor, my next question will settle this.

The Court: Very will.

Q. (By Mr. Dunn): How long have you known Lena Mae Wilkins?

A. Over a period of two years.

Q. And have you served her drinks from time to time in the course of your business?

A. Yes. At H&M I have served her.

Q. Do you feel that you could tell when she was drunk and when she was sober so that you know when it was proper to serve her a drink?

A. I have served her when she was sober and I have served her [125] when she'd been drinking a lot, and I have refused a lot of times not to give her a drink.

Q. Did she say anything to you this morning concerning her activity during the night?

A. Not until afterwards. She came in there. She was mumbling about being put out or something.

Q. Did she say whether or not she'd been to bed that night?

A. I think she made the statement that she had been up all night—just coming in.

Q. Well, did she have a thick tone, or was her voice normal?

A. She talked like a person who had been drinking a lot.

Q. Was her condition such that you would be inclined to trust her to do something, or was her con-

(Testimony of Albert J. Dungee.)

dition such that you would say she was not responsible?

A. To my knowledge she was not responsible.

Q. Would you have trusted her to do anything that day?

A. Not that particular morning.

Q. Well, when this defendant is sober, is she inclined to be pretty talkative and sit around mumbling to herself, or is she inclined to be quiet and mind her own business?

A. She's a much different person. When she's at herself she don't have very much to say and she's very quiet, but other times, when she's under the influence of whiskey, Boy, she gives you a hard time.

Q. She gave you a hard time? [126]

A. She usually does when she's like that.

Q. Mr. Dungee, are you aware of the fact that there is a law in this Territory making it a crime to serve a drunken person?

The Court: The court is not interested in that, counselor.

Mr. Dunn: All right, your Honor. I have no further questions.

The Court: You have any cross?

Mr. Kirkland: Yes, I have some cross. I was hoping that the court would allow Mr. Dunn to ask that question.

The Court: No, there is limit to what we can do. We are not going to try collateral issues at this time. We are trying one thing only; that is, whether or not this statement is admissible.

(Testimony of Albert J. Dungee.)

Mr. Kirkland: I would submit to the court it would be proper on cross-examination though.

Mr. Dunn: Your Honor, he wouldn't let me ask it on direct. It would just, without argument, exceed the scope of direct.

The Court: The Government has ruled. Please proceed.

### Cross-Examination

By Mr. Kirkland:

Q. What is your name again, sir? [127]

A. Albert L. Dungee.

Q. Now, Mr. Dungee, have you refused to serve Lena Mae Wilkins since that date for the reason you claim she was a stoolie?

A. She had been barred out of the place the following day.

Q. And she was barred out of the place the following day? A. Yes.

Mr. Buckalew: Object to that, your Honor, on the ground it's immaterial. I should have an opportunity to make an objection.

The Court: That is right. You do. Objection overruled.

Q. (By Mr. Kirkland): You have never been convicted of a crime, have you, sir?

Mr. Dunn: Your Honor, I object to that question.

The Court: Objection overruled. It's proper on cross, any phase of it.

A. Yes.

(Testimony of Albert J. Dungee.)

Q. What crimes?

A. Manufacturing and possession of distilled——

Q. Distilled spirits? A. Whiskey.

Q. Whiskey?

A. 1929, Washington, Pennsylvania.

Q. That's some time ago. A. Yes, sir.

Q. None since then? [128] A. No, sir.

Q. And where did you say you were this morning she was in there? Were you in the kitchen or out in the bar?

A. I was doing my work behind the bar at the time she came in.

Q. Were you present when Mr. Pass came down to talk to the defendant, Lena Mae Wilkins, that morning? A. She wasn't there.

Q. She had left before the police officers arrived?

A. She had left there. She called a cab and left right after she made the telephone call. I didn't see her no more until when the police were over there at Yokely's house.

Q. Did she leave immediately after she made the phone call?

A. Well, the cab come and picked her up.

Q. Cab came and picked her up. Is the defendant still barred from your place of business?

A. As far as I know Honeycutt has barred her away from the place for good.

Q. And that was the day after she gave this statement to the Federal Bureau of Investigation?

A. That was the following day when she came

(Testimony of Albert J. Dungee.)

back down there. The Honeycutt's wished her not to come back in and told me to keep her out.

Mr. Kirkland: No further cross.

The Court: Any redirect?

Mr. Dunn: No redirect examination, your [129] Honor.

The Court: Very well. Now, counsel for the defendants have put on two witnesses. You may be excused, Mr. Dungee.

(Thereupon, the witness was excused and left the stand.)

The Court: In rebuttal to the testimony of the Government concerning the sobriety of the defendant, Wilkins—Now I point out to you that in a confession, which this is not, but which is certainly much more serious and goes to a different aspect of the law, and I would conclude to be much more important than statements against, interests the law, as follows: "The fact that the accused is under the influence of liquor or drugs which affected his recollection does not make his recollection inadmissible. The intoxicated condition of an accused at the time of making a confession does not, unless such intoxication goes to the extent of mania, in the law of evidence concerning a statement made by parties while in the state of intoxication, at least not conclusive against him." Now, counsel for the defendants have failed to prove by two witnesses that there has been any intoxication to the extent of mania, and therefore, I think any further evidence



at this time would be time consuming—would not have any value. The amount of emphasis that is to be placed upon this confession—or this statement—or whatever you want to call it, is to be determined as issue of fact by the jury and therefore, the court rules at this time that if counsel does offer the same, based upon your—oh, evidence of your two witnesses, that the statement is admissible. [130]

Mr. Dunn: Your Honor, possibly from the evidence added to the court, further witnesses at this time would be time consuming, without avail. However, following one line of standard procedure, I have saved my—what I thought at least was my best witness until last, trying to build up this matter of intoxication. Now, if the court doesn't think its opinion would be changed as a result of my best witness, am I to understand then that I am to recall the two witnesses that have already testified at such time as the jury is here, in the event this statement is offered?

The Court: No. The court did not so intend.

Mr. Dunn: All right. Am I to be barred from recalling those witnesses to give the same testimony that they have already given the court?

The Court: The court wouldn't rule on that at this time, but you have the right to put on the defendant if you so desire.

Mr. Dunn: I have a right, as I understand it, your Honor, to put on any witnesses if I—

The Court: That is right.

Mr. Dunn: —so desire. Thank you.

Mr. Buckalew: One point—Has His Honor ruled whether or not that statement is a confession?

The Court: No. The court has not. As a matter of fact I don't think it's a confession, but I point out to you that [131] a confession in this court's opinion has a much farther reaching effect, an inclusive effect, than does a statement, and I may be in error in my conclusion of law in that respect, but I point out to you that it is the opinion of the court based upon your own evidence. Now, let me point out to you, Mr. Buckalew, we have had Mr. Sachen, who is a member of the F.B.I. We have had Mr. McLaughlin, who is City Magistrate, and Mr. Hartlieb, who have testified and who have stated that she was not intoxicated. Mr. Sachen, as I recall, testified that she had been drinking. Mr. Hartlieb didn't know she had been drinking, and, as I recall, the Magistrate didn't recall she had been drinking. Now, in rebuttal to this you have put on two witnesses who state that she was in a state of drunkenness, but you haven't proved in any sense of the word that she was in a state of mania as is required by the law of confession. And thus, any more time to hear other additional witnesses would be time consuming and would not avail you of any benefits.

Mr. Buckalew: Is your Honor at this state of the proceedings taking the position that intoxication goes to credibility rather than admissibility?

The Court: No. We will—Just a moment, please. The court takes the position that the state of intoxication would go—yes, I would agree to the extent of credibility to a certain extent, but it is a

question of fact for the jury to determine, not for the court. The court only has to determine whether or not [132] it is admissible, and based upon your evidence which you have produced at this time, and which I am convinced you could not rebut, based upon witnesses such as the F.B.I., the Magistrate, and the Commissioner. Now, the court isn't influenced by this at this time. Also, that is something that the court could not be influenced by, but the court is influenced by these people who have testified because of their integrity.

Mr. Buckalew: I don't mean to slur anybody in Governmental positions, but from my observation of the defense witnesses, the Government witnesses, I got the impression that the defense witnesses were more straightforward.

Mr. Kirkland: Excuse me, if the court please——

The Court: The only bad part of it, counselor, you are not the one that makes the ruling.

Mr. Buckalew: I just wanted to point it out to His Honor.

The Court: Very well. Now, do I understand, Mr. Kirkland, that you do intend to offer this?

Mr. Kirkland: That is correct, your Honor.

The Court: It has not been offered up to this date; therefore, the ruling of the court is, based upon the evidence adduced so far—I don't wish to shut you off, Mr. Buckalew and Mr. Dunn, but based upon the law, which you should certainly be aware of, and which the court spent most of the night looking up himself, is convinced that you haven't proved a *prima facie* case [133] to rebut the inadmissi-

bility of this particular witness' statement. I point out to you further, the question of motive is more or less unimportant, no matter how made. She may have been at Mr. Yokely's at the time. It doesn't have too much of a bearing upon this particular situation, and there has been a lot of law written on this point, lots of decisions. I haven't checked all the law, but I have checked considerable, and I am convinced, based upon the evidence submitted so far, that you have not rebutted the proof of the Government, and therefore, the document may be admitted in evidence over your objection. Let the record show that counsel takes exception to the ruling of the court.

Mr. Buckalew: Your Honor, there is—I think at this stage of the defense counsel should have an opportunity to examine the document and I'd like to point out to the court there is a lot of irrelevant material in here, and I think that we should have an opportunity to go through and read the statement, line by line, with the opportunity to object to every line and have His Honor rule on the immaterial and irrelevant matter in the statement.

The Court: I point out to you, counselor, that the court looked into that point also, and I am quoting Am. Jur. 20 in that respect. The mere fact portions of it may be irrelevant and immaterial does not preclude that from being struck out of the statement, and therefore, I am afraid you would be just wasting your time to look into the law unless I am in error, but [134] I think I have very diligently searched on that point.

Mr. Buckalew: Your Honor, I understood the law definitely.

The Court: The court will be glad to hear you if you can prove to the contrary. I don't think there is anything else to come before the court at this time. Therefore, the court will recess until 10:30.

(Whereupon at 10:30 o'clock a.m., December 22, 1954, court reconvenes, following a 20-minute recess, the jury having been recalled to the jury box, and the following proceedings were had:)

The Court: You may call the roll of the jury.

The Clerk: Trial jury is all present, your Honor.

The Court: Mr. Sachen, will you please resume the witness stand?

### JOSEPH V. SACHEN

resumes the witness stand and testifies as follows:

The Court: You may proceed, Mr. Kirkland.

### Direct Examination

By Mr. Kirkland:

Mr. Sachen—Excuse me, if the court please, I don't remember what my last question to the witness was.

The Court: Well, the court doesn't either. As I recall, [135] it was concerning the admissibility of this particular document, and as a matter of fact, it was testimony concerning the status of in-



(Testimony of Joseph V. Sachen.)

toxication, if any, of the witness, Wilkins—of the defendant, Wilkins.

Q. Mr. Sachen, the statement which you have in front of you—Now, when did you say that was taken?

A. That was taken September 7, 1954.

Q. And that is the statement of the defendant, Lena Mae Wilkins? A. Yes, it is.

Q. And does that statement—Did you then go before the United States Commissioner with that statement? A. Yes, I did, sir.

Q. And in your presence, and in the presence of the United States Commissioner, the defendant, Lena Mae Wilkins, swear to the truth of that statement? A. That is right.

Mr. Kirkland: Your Honor, I'd like to offer this statement into evidence at this time.

The Court: It may be admitted in evidence. Let the record show counsel have had a chance to see, also they object to its admission, and the court has already ruled on the admissibility thereof.

Mr. Dunn: That is, counsel for both defendants.

The Court: That is correct. Marked Plaintiff's Exhibit No. 1. Now, will counsel stipulate at this time that Mr. Kirkland [136] may read it in whole or in part at this time, and that either counsel may use it in whole or in part at this time or later time?

Mr. Dunn: Your Honor, we can't stipulate that he may read a statement that we objected to as being inadmissible. To do that would eradicate our objection.

(Testimony of Joseph V. Sachen.)

The Court: I—That isn't true, counsel, I don't believe.

Mr. Dunn: I am afraid to stipulate because of that.

The Court: Very well. The court will instruct you to read it at this time.

Mr. Buckalew: Your Honor, may we take one more look at this time?

The Court: Yes, you may.

Mr. Buckalew: Would the Government give me a copy so I can follow the Government when he reads the statement?

The Court: Do you have a copy, Mr. Kirkland?

Mr. Kirkland: No, your Honor, I don't have a copy of it. However, it will be a matter of record as to what I read in there, and I assure counsel that I will not read anything into the statement that wasn't there.

Mr. Buckalew: I just wanted to follow it.

The Court: Apparently he doesn't have it then, Mr. Buckalew. Very well. You may proceed, then, Mr. Kirkland.

Mr. Kirkland: Ladies and Gentlemen. This is the Government's Exhibit No. 1 in this particular case. The document [137] is dated September 7, and it reads as follows: "I, Lena Mae Wilkins, make the following voluntary statement to Joseph V. Sachen who I know to be a Special Agent of the Federal Bureau of Investigation. No threats or promises have been made and I realize I do not have to make a statement. I have been told that any state-

(Testimony of Joseph V. Sachen.)

ment I make may be held against me in any court. I have also been advised that I may be represented by a lawyer.

“My name is Lena Mac Wilkins, and I (“I” has been inserted and initialed by the defendant, Wilkins,) am 33 years of age and born on April 2, 1921, at Birmingham, Alabama.

“On the 2nd of April, 1954, James Taylor Yokely came up to me and stated that at the present time he didn’t have any girls working for him. He stated that he had a house on 1806 E “I” St. in Anchorage that I could work out of and the money I made would be for me, my kid and himself. He also said that he would take care of me if I hustled for him.

“Previously to that time I was hustling in Anchorage and had saved \$960.00. At this time I had a room at Mr. & Mrs. Marvin Clark’s home on E 8th St. This money that I saved I gave to Yokely.

“On April 4, 1954, I moved to Yokely’s house and started to hustle out of Yokely’s home. I turned one trick during this time for \$20.00, I gave Yokely \$10.00 and I (“I” inserted and initialed by defendant) kept the other \$10.00.

“On 8th or 9th of April, Yokely asked me to go to Fairbanks, [138] Alaska, because there is more money to be made there. On one of these days he gave me \$33.00 to purchase a ticket at a downtown ticket office. Airlines, I don’t exactly remember. He then gave me his luggage to pack my clothes. He then took me to the airport in his 1952 or 1953

(Testimony of Joseph V. Sachen.)

Buick. He watched me board the plane. I think it was around 8:30 p.m. He also told me to hustle on the main thoroughfare in Fairbanks and that he would come up and see me in 2 wks.

“He came up the following Sunday. I had only made \$40.00 up to that time which I gave to him. Up in Fairbanks I hustled out of taxi cabs.

“Yokely received a phone call from Kodiak, Alaska, and said there was some money to be made up there and would I like to go. I said sure if you want me to. The 4 days I stayed in Fairbanks Yokely lived with me. He then gave me \$75.00 to buy the ticket. On top of that he stated he had \$40.00 left and he'll split it with me. He gave me \$20.00. I'm not sure but I think it was the 12th or 13th (dates changed and initialed by defendant) of April. I left on the night flight which was about 8:15 p.m., and I used my true last name on the ticket.

“I took the plane to Anchorage where there was an overnite stop. That nite I stayed at Yokely's place that nite and took the morning flight to Kodiak, Alaska. I think it was about 8:30 a.m.

“On my arrival in Kodiak, I found a place out of the city [139] limits and started to hustle. On that week end I made \$200.00. I sent \$160.00 to Yokely. I sent the letter registered and used the name of Carl Samuels on the return address. I did this as instructions from Yokely. He wanted it that way he said because he didn't want a federal

(Testimony of Joseph V. Sachen.)

investigation. Although I sent \$160.00 I only registered the letter for \$100.00.

“After 3 days in Kodiak, USM Disney came to me and said he was aware of my activities and if I wanted to stay in his town I had to get a *legitimate* job. I worked in a home as a maid for 2 days. The people’s name I don’t remember. Mr. Disney again came out to see me and said he was aware of the phone call from Fairbanks and that I was sent to Kodiak for immoral purposes.

“I then started to get panicky and told Bill Jordan, a friend of Yokely’s, that I needed the fare to go to Anchorage. Yokely sent \$45.00 to Jordan, he gave me \$40.00. He sent this money by wire.

“On the 13th of May, I took the afternoon flight to Anchorage where I was met by Yokely at the airport and he took me to his house. I hustled for him from that date till July 31, 1954. I did all the hustling out of Yokely’s home. Up to this date I figured I had made about \$8,000.00. Up to this date and only \$450.00 has been spent on my kid and mother.

“I also want to add that on May 22, 1954, Yokely left for Portland, Oregon, to see his so-called wife Margerite Yokely, address unknown. On May 25, 1954, he wired me to “Send the money.” I sent him by wire \$15.00 the same day and signed it James Kirby [140] Yokely. I then sent \$50.00 on the 26th of May and another \$50.00 on the 27th of May. I sent all this money by wire and signed it by James



(Testimony of Joseph V. Sachen.)

Kirby Yokely. On June 1, 1954, I received a wire from Yokely stating "Margie had gone to Fairbanks. Everything worked out R.O.K. Will see you soon." Yokely was the signature on the wire and this wire was addressed in my right name.

"I have read the above statement and it's true to the best of my knowledge. Signed Lena Mae Wilkins, witnessed by Joseph V. Sachen, FBI, Anchorage, Sept. 7, 1954; Theodore E. Pass, Det., Anchorage Police Dept. Subscribed and sworn before me this Sept. 7, 1954. Gordon W. Hartlieb, United States Commissioner."

Q. (By Mr. Kirkland): Now, Mr. Sachen, after this statement was verified—Excuse the question. After this statement was signed and a warrant was issued, did you go to the home of the defendant, Yokely to take him into custody?

Mr. Buckalew: Object to that on the ground it is something that happened after the commission of crime.

The Court: What relevancy, counselor?

Mr. Kirkland: Your Honor, maybe I should approach the bench with counsel rather than state it in front of the jury.

The Court: Very well.

(Whereupon, counsel for plaintiff and counsel for defendant, together with the reporter, approach the bench and the following proceedings were had out of the hearing of the jury:) [141]

(Testimony of Joseph V. Sachen.)

Mr. Kirkland: I am going to show that the defendant, Yokely, when the officers came down to arrest him, that the defendant, Lena Mae Wilkins, was in their company and that the defendant, Yokely, when finding out what he was arrested for struck the defendant, Wilkins, with his fist and the purpose of showing—that is to show guilt on his part by striking the defendant, Wilkins, the same being a threat or the actual—the jury could infer as a threat against her testifying. I contend this does not have to be. The person doesn't have to say, "I'm threatening you," but that the acts of the defendant can be considered by the jury for what they are worth as to whether or not it was a threat against her testifying.

The Court: Well, the court feels that the question itself is objectionable and the objection will have to be sustained. You may ask him what he did as a result of that.

Mr. Buckalew: Your Honor, I don't think it's admissible for the reason I don't think it shows any threat on the part of Yokely.

Mr. Plummer: That is for the jury to decide.

The Court: That is a question for the jury.

Mr. Buckalew: I am not through yet.

The Court: Yes, let Mr. Buckalew finish.

Mr. Buckalew: I've got the flu. I don't feel like doing anything.

Mr. Yokely: Your Honor, may I listen to the conversation, [142] too?

The Court: Yes, you may.

(Testimony of Joseph V. Sacher.)

(Defendant Yokely approaches the bench.)

Mr. Buckalew: It shows conduct on the part of Yokely which would go to his—which would have value as far as his guilt or innocence. In fact, I think it could be construed as an act consisting of innocence in that there was an F.B.I. agent, Officer Pass—uniformed officers present, and if he had any idea of intimidating the Government witness, he wouldn't have done it under those circumstances. It only indicates that this man, and I think the evidence will show, committed himself to abusive language.

The Court: Not too loud, please.

Mr. Buckalew: Vile epithets were heaped upon his head to the point where he lost control of himself and I think any man in that same situation would have reacted in the same manner that Mr. Yokely reacted.

The Court: Well, in that respect the court takes the position it is a question of fact for the jury to determine and not for the court. Your objection will be sustained as to the form of question asked, but he may ask what was done by this witness. Let the record show you object and take exception in respect thereto.

Mr. Dunn: I'd like to be heard on that, Your Honor.

The Court: You may.

Mr. Dunn: The objection's the same one that has been [143] previously made to the effect that it's not proper to allow the prosecution to prove a

(Testimony of Joseph V. Sachen.)

conspiracy by acts which occur subsequent to the termination of the conspiracy. And unless it is offered to prove that it is an irrelevant matter, if it is used for any purpose other than that, it is irrelevant, and if it is used for that purpose it is inadmissible in my opinion. That is all.

The Court: Very well. The objection will be overruled. Then you may inquire. \* \* \* If you want to come up each time that your counsel comes up, I haven't any objection, Mr. Yokely.

Mr. Yokely: Thank you.

The Court: And likewise true for Miss Wilkins. It is very highly irregular, but if you want to, you may do so. \* \* \* Objection is sustained as to the form of the question, but you may rephrase your question, Mr. Kirkland.

Q. (By Mr. Kirkland): Mr. Yokely, what, if anything occurred—I mean, Mr. Sachen, excuse me, sir. What, if anything, occurred at the time the defendant Yokely was taken into custody?

A. When the facts were presented to the Assistant United States Attorney, Jim Fitzgerald, he signed a complaint and we went down to 1806 East "I" Stret to apprehend Yokely. As we arrived at the door, I made one knock, and at that time, Lena Mae Wilkins gave me a key and said, "You can go right in," which Officer Pass and myself did. We asked Lena Mae [144] what bedroom was Yokely's and she said, I think it was the second or third on the left. We knocked at the door there and we saw Margie Yokely there and asked her where

(Testimony of Joseph V. Sachen.)

James Yokely was, and she said that he's in the bathroom. Well, we proceed to the bathroom and I knocked at the door and he was busy there and I told him as soon as he gets through I'd like to talk to him. When he came out I told him that we had a warrant for his arrest, and he stated to me that we didn't have any right and I told him we had a warrant. He would have to come with us to appear before the United States Commissioner and I was placing him under arrest at that time. I told him at that time that he did not have to make any statement to me. I also told him that anything he did say to me would be held against him in any court of law. I told him that he has the right to have an attorney. After——

Mr. Kirkland: Excuse me. Did you serve the warrant on him at the same time?

A. Yes, Mr. Pass did—in my presence.

Q. Did you advise him what he was under arrest for?

A. Yes, we did. Then, at that time Lena Mae was using loud language and abusive language—very abusive language against Yokely. And I went over to Lena Mae. I said, “Lena Mae, don't do it.” I said, “Refrain. We have him in custody,” and she says, “Well, let me show you what he has done with my clothes.” So she took me to her room and in her room, [145] in a closet, was all her clothes thrown in a big heap. I told her that I couldn't do anything about it. And she kept on cussing abusive language



(Testimony of Joseph V. Sachen.)

towards Yokely. In the meantime, Yokely was getting dressed and we marched, or we walked out of the house. I went first, then Yokely, and then Detective Pass. She was still screaming at him stating that, "I hope that she can give you . . ." or words equivalent to this. I don't exactly remember. "I hope she can give you \$8,000 like I gave. I hope you're satisfied," and she kept on using very foul, abusive language, and I again told her, "Lena Mae, please keep quiet," as we walked out of the front door, and about 20 feet, I would say, going to the door, I opened the front door and told Yokely to enter, but in the meantime, he took a swing and hit Lena Mae on the top of the head with his fist. At that time I turned around and grabbed him, put the handcuffs on him, and put him in the car. Then I told Yokely, "I think you have another charge against you. I will have to discuss this with the United States Attorney." In the meantime, Yokely stated to me that he didn't want Lena Mae around the house with his wife, Margie Yokely, and asked to if I would see that she would get her clothes and get out. I told him it wasn't my duty, but I would do it, so Detective Pass got on the Radio and called up other uniform police to handle the situation while we took Yokely in front of the United States [146] Commissioner. After uniform police came there, we took Yokely back to the court house here and presented him in front of the United States Commissioner.

(Testimony of Joseph V. Sachen.)

Q. Now, Mr. Sachen, in this statement of Lena Mae Wilkins, did you contact the ACS Postmaster at Kodiak, and so forth to verify it?

A. Yes. I didn't do it. One of the other agents did, although the dates in that statement aren't exactly correct.

Mr Buckalew: Just answer the question.

A. Yes, Mr. Buckalew.

The Court: Objection sustained.

Mr. Kirkland: Your witness.

The Court: You may cross-examine.

### Cross-Examination

By Mr. Buckalew:

Q. Mr. Sachen, would you tell me everything that Lena Mae said when you were in the house making the arrest?           A. The arrest?

Q. Yes.

A. Everything she said to me?

Q. That you can remember. You testified she mentioned the \$8,000 and that is about it. What else do you remember? [147]

A. She mentioned her clothes, as I have stated. That is what he says here. "... what he has done with my clothes," and she took me to her room and showed me her clothes. In the meantime she was also looking for a telegram, which I forgot, and her sending that money down to Yokely when he was in Portland, and she couldn't find it.

(Testimony of Joseph V. Sachen.)

Q. Just what did she call Mr. Yokely?

Mr. Kirkland: Excuse me, it's a very foul word, your Honor.

Mr. Buckalew: Your Honor, I don't—His Honor mentioned the word "mania." I think that the jury should know this woman's state of mind. That is the only way I can get it before the jury. Now, he is—the \$8,000 and clothes, that is favorable testimony from the government. I should elicit everything that happened that went into it. I want to know everything that went on down there.

The Court: I agree with you. You have the right to know, excepting I hate to subject the jurors, too, and the court personnel to that type of language. If you feel it's mandatory, you can assume that responsibility.

Mr. Kirkland: The Government will stipulate it's just about as vile as could be expected out of any woman.

Mr. Buckalew: Could I speak with my co-counsel?

The Court: You may.

(Mr. Buckalew and Mr. Dunn confer together.) [148]

Mr. Buckalew: Your Honor, I think that under the circumstances, if the Government is willing to, we can draw up some sort of stipulation, that the language is about as foul as you can get. That would be sufficient as far as the defense is concerned.

(Testimony of Joseph V. Sachen.)

The Court: Very well. Are you willing to stipulate to that, Mr. Kirkland?

Mr. Kirkland: Yes, your Honor. I know what the language is and I don't see any sense in subjecting everyone to it.

The Court: It isn't a question whether you know what it is. It is a question whether you will stipulate to it.

Mr. Kirkland: Yes.

Mr. Buckalew: The defense is willing to stipulate to it.

The Court: Very well. Let the record reflect that the statements of Lena Mae Wilkins were just about as foul as they could get and were directed toward defendant Yokely.

Q. (By Mr. Buckalew): Mr. Sachen, what was Lena Mae's state of mind at that time?

A. She was very angry, sir.

Q. Would you say she acted like a woman that was out of her head?

A. That is a hard question to answer.

Mr. Kirkland: Objection.

The Court: Objection overruled. You may answer.

A. I'll say she was very angry. I don't know if she was out of [149] her head.

Q. Did you tell her on several occasions to quit this screaming at Yokely?

A. Oh, yes; I did, sir.

Q. Did that have any effect on her?

(Testimony of Joseph V. Sachen.)

A. For a moment or two, then she came right back again.

Q. Did any of the other officers tell her to quit screaming? A. Not that I remember.

Q. How many officers were present when the arrest was made? A. Two, sir.

Q. Now, when Mr. Yokely was in the bathroom, did you identify yourself through the door?

A. Yes.

Q. Did Mr. Yokely ask you where you got the key? A. Yes, he did.

Q. What did you tell Mr. Yokely?

A. I didn't tell him.

Q. Just didn't answer that question?

A. That is right.

Q. About what time of the day was this?

A. The arrest of Yokely?

Q. Yes.

A. As a guess, around 2:00 o'clock. Between 2:00 and 2:30, I'd say.

Q. Did you still smell liquor on Lena Mae's breath at that time? [150]

A. I can't remember. I don't think so.

Q. Would you describe to the jury exactly how Lena Mae was acting—that is, was she waving her arms around?

A. She was walking back and forth shouting at Yokely that he'd done her wrong and cussed her, like I previously said, every cuss word that there's available, that I know, anyway.

Q. Was she acting like a drunken woman?



(Testimony of Joseph V. Sachen.)

A. She acted like a very angry woman.

Q. Did she act like an angry woman that had been drinking?

A. Like an angry woman that's been drinking? Well, I think you can get angry whether you are drunk or not, can't you, Mr. Buckalew? She was very angry. That is as much as I can tell you about that.

Q. Now, when you first interviewed her, you smelled alcohol on her breath, did you?

A. Yes; I did.

Q. Did she appear to you like she had been up all night?

A. I think she could have been up all night. I never asked her. She appeared like she would be. I'm not sure.

Q. Didn't you testify in this court that she looked like she had been up all night?

A. I said she looked like it. I'm not sure.

Q. Did you smell alcohol on her breath?

A. Yes; I did.

Q. That was around—oh, 10:00 o'clock in the morning? [151]

A. 9:00 o'clock, sir; around 9:00.

Q. Now, did you have Lena Mae in protective custody, so to speak, from 9:00 until 2:00?

A. Protective custody? No, after I'd taken a signed statement—I think I said this once before, your Honor.

The Court: You must answer the question.

A. After I came to the police station, we took

(Testimony of Joseph V. Sachen.)

the signed statement. She was with us up to the time we took her down to the flats again and I would say that was from 9:00 o'clock until 11:30 or so.

Q. Did Lena Mae advise you at that time she needed a couple more shots of scotch?

A. No; she wanted a dollar and I gave it to her. I'm quite sure it was cab fare to come back and meet us at the police station at 1:00 o'clock; the arrangements we had made there.

Q. During the course of taking this lengthy statement, did she advise you that she spent all her money that morning tipping the cab driver?

A. Not that I remember, sir.

Q. You don't recall Lena Mae telling you that she spent everything she had and gave it to the cab driver?

A. I don't remember that, sir. If she did, I don't remember.

Q. Did you put everything in the statement that Lena Mae said?

A. Practically everything she said; yes, sir.

Q. Could I see the statement, please? (Statement was handed to [152] Mr. Buckalew.)

Q. Did Lena Mae write this out in longhand?

A. No; I wrote it first in longhand, sir.

Q. How long did it take you to write the statement in longhand? A. Oh, I can't remember.

Q. Well, have you got your little notebook there?

A. No; I haven't got it with me, sir.

Q. Could you give me an approximation how long it took?

(Testimony of Joseph V. Sachen.)

A. Oh, I'd say about an hour and a half, something like that—between an hour and an hour and a half.

Q. Did you examine her thoroughly?

A. Did I examine her?

Q. Or did you just let her talk?

A. She was my witness at that time and she was making the complaints and I just let her talk. She voluntarily came and gave that statement to me. I didn't have to ask her anything.

Q. You didn't ask her questions then during it?

A. I asked her exactly what—she gave it to me. She voluntarily came. I didn't ask her for any statement, Mr. Buckalew.

Q. Now, I am talking about the contents of the statement.

A. That is what she gave me. She voluntarily gave it.

Q. Now, it took an hour and a half. You didn't ask her a question during the hour and a half? [153]

A. I probably asked questions. I don't remember. Questions like, "Is this the way it was, Lena?" Usually in signed statements it's that way, Mr. Buckalew.

Q. Did you try to write the statement in Lena Mae's own diction there?

A. Yes; as much as I could.

Q. She told you that over a course of time that she had given James Taylor Yokely \$8,000?

A. Yes; she said that.

Q. Now, will you look at the statement and tell

(Testimony of Joseph V. Sachen.)

me how long she had been hustling to make \$8,000?

A. Well, she made this statement. She said——

Q. Did you try to verify that?

A. No; I didn't verify it because I didn't see any reason to, Mr. Buckalew. She says from May 13—oh, it's 13th of May, "I hustled for him from that date till July 31, 1954. I did all the hustling out of Yokely's home. Up to this date I figured I had made about \$8,000.00."

Q. Now, how much is that a month? How many months did she hustle?

A. How many months from May?

The Court: Mr. Buckalew, the court would like to interpose objection to that. It is a matter of mathematical construction. It's obviously asking for a conclusion. Everybody can figure it out. It doesn't have any probative value. [154]

Mr. Buckalew: Well, it might, your Honor.

The Court: In what respect?

Mr. Buckalew: These gentlemen are very thorough on everything else, apparently, and I just want this man to realize how absurd this statement is as far as the \$8,000.00 is concerned, and I want to point it out to the jury.

The Court: Let me point out to you, counselor, that is a question of argument and no matter what he may have—I think it will have no bearing upon the outcome of this case. It's a matter of argument, counselor.

Q. (By Mr. Buckalew): During the hour and

(Testimony of Joseph V. Sachen.)

a half you only interposed a couple of objections, is that right?

A. Yes, Mr. Buckalew; she gave the statement voluntarily, like I said. I didn't have to. She came up with the dates and everything else. At that time she was my witness. She called me.

Q. You asked her about which airline she traveled on, didn't you?

A. Definitely. She told me that——

Q. Mr. Sachen, is it your contention that this complete statement was given to you by Lena Mae Wilkins and you only interposed one or two objections over a period of an hour and a half?

A. I didn't say one or two, Mr. Buckalew. I pointed—I want [155] to bring in this: I asked her if she was correct, if she wanted to give me the statement, or are you sure.

Q. You are not getting the point, Mr. Sachen. I will admit she came up to your office. You testified to that, but what I am——

A. She didn't come to my office.

Q. Well, she sought the officers out?

A. Right.

Q. All right. The only thing I am trying to find out. It took an hour and a half to take the statement. How was it given? Did she just sit down and start talking and this is what she said, or did she; for example, did she say one line, you asked her a question, she say another line, you asked her another question?

A. Usually on signed statements, Mr. Buckalew,



(Testimony of Joseph V. Sachen.)

I asked, "Start from the beginning and tell me exactly what happens." I take the statement down in longhand. And I get everything in there that she wants to tell me.

Q. Now, when do you get the things in the statement that you want in the statement?

A. What she wanted to tell me, because if you look at the preface of that signed statement, you will see where she does not have to give me the signed statement.

Q. I have read that Mr. Sachen. Now, will you look at the statement and see if you can tell me—I'm not trying to embarrass you, I just want to know why you spell night "n-i-t-e." [156] Is there any purpose in that?

A. No, I think you can you can spell night "n-i-t-e" or "n-i-g-h-t."

Mr. Kirkland: I object. I am——

The Court: What is the relevancy, counselor?

Mr. Buckalew: I don't know.

The Court: Well, then——

Mr. Buckalew: I mean, it's got me puzzled.

The Court: Objection sustained. If you don't know——

Q. (By Mr. Buckalew): Now, when you got the statement reduced to writing in this form, did you go over the statement line by line or page by page with Lena Mae Wilkins?

A. I had her read it.

Q. Now, how long did it take her to read it?

A. About ten minutes.

Q. She read it page per page?

(Testimony of Joseph V. Sachen.)

A. She read everything about it, yes, sir.

Q. Did you watch her while she was reading the statement?      A. Yes, I did.

Q. How about the phone calls from Kodiak, Alaska? Was that her idea?

A. She gave me that statement voluntarily; just what she said as I put it down in writing.

Q. I'm not asking you whether its voluntary. The question is, did you ask her before she said anything about telephone [157] calls—did you say, "Did you make any telephone calls from Kodiak?"

A. I did not.

Q. Did you ask her any time during this interview if she sent any wires?

A. I don't remember. I don't think so. Just what she said is what I put down.

Q. Then, it's your testimony that you didn't have to prompt her at all?

A. I didn't have to prompt her, Mr. Buckalew.

Q. You didn't interrogate her about which airlines she rode on?

A. I asked her the airlines. When she could, I put that down in the statement.

Q. Did you ask her if she sent letters from Kodiak?

A. I don't remember if I did or not. She came up with the idea just exactly as it's said there. She sent the money to him.

Q. Did you tell her any time during the course of the conversation, "We have got to specify things on this if we are going to get this boy"?

(Testimony of Joseph V. Sachen.)

A. I don't think I ever said that to her. I wouldn't have any reason to say that Lena Mae—I don't think——

Q. You don't know whether you made the statement or not?

A. I am not sure. I know what I did tell. I said, "Lena, I want the truth. That is, I want the truth on it."

Q. Now, whose idea was it to initial the portions in this statement? [158]

A. Mr. Buckalew, any time we take a signed statement, we are instructed if there are any erasures or markovers, that the defendant, or the person who signs the statement, mark initials so that they know that the error is there. That is a procedure that we have in our work.

Q. In other words, that is a demand?

A. That is the way we are taught.

Q. Now, will you look at the statement a second, and I want you to think about this. The first correction in there—as a matter of fact, didn't you point that out to Lena Mae and say, "Insert the word 'I' in there and initial it"?

A. No, I did not. When Lena Mae read that typewritten sheet, she put that in by herself and initialed it by herself. I did not tell her that.

Q. Will you look at the statement and tell me how many more corrections are in the statement?

A. Seven.

Q. It took her ten minutes to read it?

(Testimony of Joseph V. Sachen.)

A. Yes.

Q. She made all those corrections; found them herself? A. As I said, Mr. Buckalew——

Q. Just answer that question. Did she find all those corrections herself?

A. That is right. You—as you see these two here, she put in herself. These two were the dates—she changed the dates [159] herself on that. The misspelling of the word “legitimate” she put her name on there. And the same with “Samuels.”

Q. Mr. Sachen, do you mean that Lena Mae Wilkins checked the spelling of the F.B.I. agent in a statement they intend to introduce into court?

A. Yes, why not.

Q. And each separate correction in there. You didn't point any of them out to Lena Mae Wilkins?

A. No, sir. I did not point out one to Lena Mae Wilkins?

Q. It took her ten minutes to read and correct the statement? A. Approximately.

Q. You don't have your log on that?

A. No, sir.

Q. Have you got a log in your office on it?

A. On her, yes.

Q. I mean—Oh, for example, yesterday, you seemed to have a log on everything. Do you have a log when she made the first correction?

A. When we make hers the——

Q. Just answer the question.

(Testimony of Joseph V. Sachen.)

A. Well, if you let me, I probably can tell you. On this—when I took this thing in longhand, I asked Lena Mae to look at it and see if it was all right—that initial one. So I said, “I am going to have my steno type this up,” and so I brought the one that I had written in longhand and that one, [160] and asked her, “There are two marked identical, like you said this morning. Read them and make your corrections and see if they are right,” and that is the corrections she made.

Q. Now, when you advised Lena Mae Wilkins of her constitutional rights, did you indicate to her that she might get charged with conspiracy when she took this statement? A. No, I didn’t.

Q. Didn’t indicate that to her? A. No.

Q. How long did it take you to advise her of her rights? A. Oh, say a minute or two.

Q. Now, what did you tell her when you advised her of her rights?

A. I told her she did not have to make the statement. I told her any statement she made would be held against her in any court of law; that she has a right of counsel.

Q. That is all you told her?

A. That is all.

Q. Now, the language in the statement—is it your testimony that that is Lena Mae Wilkins’ language?

A. That is how she gave it to me.



(Testimony of Joseph V. Sachen.)

Q. Now, when you took the statement, did you immediately commence to verify it?

A. To verify it, yes.

Q. Did you call Lena Mae back to the office after that?

A. No, she met at that time at the Assistant United States [161] Attorney's Office where Mr. Fitzgerald stated that he would like to have that statement in affidavit form, and Mrs. Wilkins had no objection to it.

Q. Do you have authority to put people under oath? A. Yes, I do.

Mr. Kirkland: Objected to. It's immaterial.

The Court. It may have some relevancy. I don't know at this time. Is that preliminary, counselor?

Mr. Buckalew: Yes, sir.

The Court: Very well. Objection overruled.

Q. (By Mr. Buckalew): Do you have authority to put witnesses under oath?

A. In certain cases, yes, I do.

Q. Do you have authority to put witnesses under oath in this kind of case? A. I'm not sure.

Q. Now, as a matter of fact, Mr. Sachen, you didn't take her down to Mr. Hartlieb's office because you figured this question of drunkenness would come up, did you? I said, "you didn't."

A. Oh, no, that was the decision of Mr. Fitzgerald at that time to have that. That was none of my decision. That was Mr. Fitzgerald's idea to have the signed statement in affidavit form.

(Testimony of Joseph V. Sachen.)

Q. Did you tell Lena Mae after she was up in the office she was [162] at liberty to leave?

A. What office?

Q. Wherever you took the statement. Where did you take this statement?

A. As I previously said, it was taken at the police station.

Q. That is, the City Police Station?

A. Yes, sir.

Q. It wasn't taken in your office?

A. No, sir.

Q. Well, did you proceed from the police station over to your office?

A. No, we never did go to my office.

Q. Was this secretary an F.B.I. secretary?

A. One of our F.B.I. secretaries, yes, sir.

Q. Then, you sent the statement over to your office?

A. No, I didn't send it. I brought it there.

Q. Oh, I see. And had the statement reduced to the present form—typewritten?

A. That is right. Exactly what the written form that I wrote out in long hand.

Q. Now, where was the statement actually signed? A. That statement there, sir?

Q. Yes.

A. That was signed in the Assistant United States Attorney's office, Mr. Fitzgerald's. [163]

Q. I take it that you were present and Mr. Pass was present? A. Yes.

Q. That is, when Lena Mae signed the state-

(Testimony of Joseph V. Sachen.)

ment?       A. That is right.

Q. Then she didn't sign the statement in the presence of Judge Hartlieb?

A. The procedure is this, Mr. Buckalew. She was then presented before Mr. Hartlieb to the United States Commissioner, who asked her if the statement was true, the procedure he goes through, and we went with Lena Mae Wilkins down to the United States Commissioner's office and put it in affidavit form, which she swore was true and correct. That was still Mr. Fitzgerald's.

Q. Now, just prior to the time the statement was signed, did you advise her again of her rights?

A. Yes, I'm quite sure I did.

Q. Would your log show whether or not—I will admit it's in the statement. My question is, when she signed it before Mr. Fitzgerald, yourself, and Pass, did you then advise her that she didn't have to make any statement; if she did, it would be used against her?

A. I am quite sure I did. I usually do.

Q. As a matter of practice?

A. That is right.

Q. But you don't remember in this case whether you did or didn't? [164]

A. I'm not quite sure on that.

Q. You permitted a complaint, then, to be signed against Mr. Yokely prior to the time the statement had been verified?

Mr. Kirkland: Object to the question, your

(Testimony of Joseph V. Sachen.)

Honor, Mr. Sachen doesn't permit anything of that nature.

Mr. Buckalew: Excuse me, your Honor.

The Court: Objection sustained. You may rephrase your question.

Q. Were you the moving party in instituting the final files of complaints against James Taylor Yokely prior to the time the statement had been verified?

Mr. Kirkland: Object to that question.

The Court: On what grounds?

Mr. Kirkland: Immaterial, as to who moves—not unless he is trying to contend the F.B.I. agent is trying to frame someone.

The Court: In that respect, objection overruled.

Mr. Buckalew: I object to that statement I am implying the F.B.I. framed anybody, and he knows it.

The Court: The objection is sustained and the jury is instructed not to consider the answer made by counsel and the court instructs counsel at this time not to make any more such statements.

Mr. Buckalew: Your Honor, where were we on the last question?

The Court: The question whether or not he was the moving party, if you will recall. [165]

Q. (By Mr. Buckalew): Can you answer that?

The Court: Better restate it again.

Mr. Buckalew: Would you read the question back, please?

(Testimony of Joseph V. Sachen.)

The Court: I had hoped to save time by you restating it.

Q. The question whether or not you were the moving party that got this complaint filed against James Taylor Yokely prior to the time that the facts of the statement were verified?

A. In other words, you mean if I formed an opinion?

The Court: No.

A. If I did, I presented it after I had the signed statement. I think I can answer it. After I had the signed statement, I presented the facts to Assistant United States Attorney Jim Fitzgerald, who authorized me to sign a complaint against Yokely.

Q. Now, Mr. Sachen, is it true that the facts were based solely on the statement here?

A. I gave the facts. I gave those facts to Mr. Fitzgerald, exactly what's in that statement, yes. These are the facts.

Q. Mr. Sachen, I would like to ask you a few more questions about Mr. Yokely's house?

A. Yes.

Q. Now, did you go into Lena Mae Wilkin's room? A. Yes, I did.

Q. You went into the room and observed her clothes on the floor? [166]

A. That is right. She asked me to come in and observe them.

Q. Now, did you observe anything else in that room?



(Testimony of Joseph V. Sachen.)

A. I only know there was a bed and——

Q. How about a whiskey bottle? Did you observe a whiskey bottle?

A. I think there was, but I'm not sure.

Q. Was there a dresser in there?

A. I think there was, yes.

Q. Wasn't there a whiskey bottle on the dresser?

A. I'm not sure. I didn't observe it that closely. I was more interested in my main duty on that trip. This was to apprehend Mr. Yokely.

Q. Did you see Lena Mae Wilkins take a shot out of the bottle while she was there?

A. No, I didn't see her.

Q. All the time you were in the house, were you in a position where you could keep Lena under surveillance? A. No, I wasn't.

Q. Where is the bathroom with reference to Lena Mae's room?

A. It's down the hall and way at the end of the hall past the kitchen.

Q. Did Lena Mae's room have a lock on it?

A. Didn't have when I got there. She invited me to look at her clothes. The door was open.

Q. You don't know, then, whether the door had a lock or not? A. No, I don't. [167]

Q. There were three bedrooms in that house?

A. I'm quite sure there were three, yes.

Q. Lena Mae Wilkins lived in her own bedroom?

A. That is right.

Q. And——

(Testimony of Joseph V. Sachen.)

A. I don't know if she lived there, but she had a bedroom there.

Q. Were her clothes in that room?

A. Yes, her clothes were in that room.

Q. Did anything else in the house indicate that she lived in any other bedroom?

A. I don't know, I said.

Q. You don't know whether she lived in the other room or not? A. That is right.

Q. Evidence you had indicated she had her own room and lived in it? A. That is right.

Q. Now, where was James Taylor Yokely's room?

A. His room, I think, was the second or third down the hallway on the left, counting from the front entrance.

Q. Were any other occupants in the house?

A. Mary Yokely was in the bedroom there when I came in.

Q. Did Lena——

A. In Yokely's room.

Q. During the course of this statement, didn't Lena Mae advise you that she wanted a room down there? [168]

A. I don't remember, if it's not in that statement.

Q. That wouldn't help the United States out very much if it was in the statement, would it?

A. Are you referring, Mr. Buckalew, that that statement is not true?

Q. No.

(Testimony of Joseph V. Sachen.)

A. I just wanted to know.

Q. Did you cut anything out that Lena Mae said?

A. I didn't cut anything out at that time because Lena Mae was my witness. She called me.

Q. I understand all that: I understand all that. It is your testimony, now, that this statement here—the statement that is now in evidence, that is going to the jury, is Lena Mae's statement, and that she sat down and talked and you wrote it down—what she said?

A. That is right.

Q. And during——

Mr. Plummer: I object to this interrogation. The question's already been asked at least three times, or at least twice, of this witness, and has been answered by this witness.

The Court: The court doesn't know. Threé or four times. That is irrelevant. The objection is sustained.

Mr. Buckalew: Your Honor, I am having a hard time getting anything out of this witness.

The Court: Well, in that respect, counselor, that is [169] one of the problems that always a defend-and counsel runs into, but there is nothing I can do about it. I don't know what to suggest.

Mr. Kirkland: Your Honor, could I make a suggestion?

The Court: No.

Mr. Buckalew: Your Honor, could I approach the bench?

The Court: You may.

(Testimony of Joseph V. Sachen.)

(Thereupon counsel for the defendant, James Taylor Yokely, approached the bench and the following discussion was had.)

Mr. Buckalew: I am sorry to get back on my feet, but I had an appointment with the doctor at noon and he said if I don't get down there—I don't want to tell the jury.

The Court: All right. Fair enough. We will recess at this time. I'd like to recess until 2:15. Have you any objections?

Mr. Dunn: No.

Mr. Plummer: Not at all.

Mr. Kirkland: Do you have any objections when we do come back to let me get the postmaster from Kodiak——

Mr. Buckalew: We don't have any objection to putting the postmaster——

Mr. Kirkland: From Kodiak and Fairbanks so he can get out this afternoon?

Mr. Dunn: No.

The Court: Since Mr. Buckalew isn't feeling well—— [170]

Mr. Buckalew: I'm going to get a shot. I'll be all right.

Defendant Yokely: Your Honor, can I say something?

The Court: No. The court would like to suggest if you have anything to say, you speak to your counsel and that the court then could hear from your counsel in respect thereto.

(Testimony of Joseph V. Sachen.)

The Court: Ladies and Gentlemen of the Jury, it is desirable to continue at this time this case until this afternoon. Mr. Buckalew's not feeling too well so we are going to take a recess until 2:15. Therefore, I must again instruct you not to discuss this case or permit other persons to discuss it with you.

The Court will stand in recess until 2:15.

(Whereupon, at 11:50 o'clock a.m., December 22, 1954, the court continues the cause to 2:15 o'clock p.m., of the same day.)

(At 2:15 o'clock p.m. counsel for plaintiff and counsel for the defendant being present, the trial of said cause was resumed:)

The Court: Will you please call the roll of the jury?

The Clerk: Trial jury is all present, your Honor.

The Court: Mr. Sachen, will you please resume the witness stand.

(Thereupon, the witness resumed the witness stand.) [171]

Mr. Buckalew: Could we have just a minute, your Honor?

The Court: Yes, you may.

(Counsel conferred and thereupon the following proceedings were had:)

Mr. Buckalew: Defense is ready to proceed, your Honor.



(Testimony of Joseph V. Sachen.)

The Court: Very well. You may continue. Mr. Buckalew, you hadn't concluded your cross, had you. At least, you didn't indicate that to the court.

Mr. Buckalew: I was just about finished—I have, your Honor.

The Court: Very well. Mr. Dunn, you may cross-examine.

Q. (By Mr. Dunn): Mr. Sachen, I think you testified on direct that at some place during your contact with the defendant, Wilkins, she got out of your car approximately two blocks from Yokely's house. Is that true? A. About that, yes, sir.

Q. Now, you were taking her from what place at that time? A. From the police station.

Q. That was after she had given you the statement? A. That is right.

Q. Was it prior to the statement being reduced to its present form?

A. The statement was never reduced to its present form.

Q. Well, it must have been reduced to its present form. It's in [172] existence now. Was that prior to the statement being typewritten?

A. That is right. Prior to that, yes.

Q. When you left the police station, did she ask you to take her home?

A. She asked Detective Pass to take her home. Detective Pass did take her in his car down there.

Q. You know why she asked to get out of her car two blocks before she got home?

(Testimony of Joseph V. Sachen.)

A. I think she was discussing that with Detective Pass at that time.

Q. Did you overhear it?

A. I think she was—frightened, I think, would be the main thing.

Q. What? A. She was frightened.

Q. She was frightened?

A. Or she didn't want to be seen. Either one.

Q. Do you know where she went after she got out? A. No, I don't, sir.

Q. Now, did you pick her up later that day?

A. No, she came back.

Q. She returned?

A. She returned to the police station, yes, sir.

Q. Now, you testified yesterday concerning the times at which [173] these various incidents with respect to this statement took place, did you not?

A. Yes, sir.

Q. Now, was the jury out at that time?

The Court: Yes, they were.

A. I think they were, yes.

Q. Will you repeat that testimony, please?

Mr. Kirkland: Excuse me. I wish counsel would ask questions rather than just repeat his testimony of this morning.

The Court: In respect thereto, he is trying to shorten it up. Objection overruled.

Q. (By Mr. Dunn): Please identify the instrument from which you are reading?

A. This is the interview log. We keep this when we take signed statements from anyone. We take

(Testimony of Joseph V. Sachen.)

signed statements; we keep interview time; advise the persons of their rights and what time the statement was completed, and the time she has signed it. We start out first: Interview—Lena Mae Wilkins; Interviewed by—My name and Detective Pass of the Anchorage Police Department; the place was Anchorage Police Department, and date was 9/7/54; Time person interviewed; she was informed that she was not required to make a statement and that any statement she made could be used against her in court at 9:20 a.m. Time person interviewed was advised of rights of counsel was 9:22 a.m. Time interview began was 9:25. Time [174] guilt or participation of crime admitted—9:25. Time oral interview concluded was 9:40. Time preparation of statement commenced longhand or time dictation began to stenographer; that was 9:45, by whom written in longhand or dictated. I put the writer. It is myself. Time statement completed in longhand or time dictation concluded was 10:20, and turned over to the person for interview and reading and signature at 10:20. Person interviewed completed reading statement at 10:30 a.m., and signed at 10:30 a.m. And at the bottom is my name and title.

Q. May I examine that, please?

A. Surely.

Q. I think that would be quicker than my asking you questions on what you testified to.

(Paper was given to counsel for the defendant, Mr. Dunn.)

(Testimony of Joseph V. Sachen.)

Q. Well, now, Mr. Sachen, on this instrument it says, "Time of preparation of statement commenced in longhand or time dictation began to a stenographer—9:45." Well, now, which of those took place at 9:45?

A. That time was taken in longhand, sir.

Q. That is when you started writing it down yourself?

A. That is right.

Q. And then time statement completed in longhand or time dictation concluded—10:20. That 10:20 refers to the time when you yourself finished writing it out in longhand? [175]

A. That is right.

(Statement thereupon was handed back to witness.)

Q. And then the statement was signed by the defendant, Wilkins, at 10:30. Is that right?

A. That is right. I think so.

Q. That is what your log shows?

A. Yes, that is right, sir.

Q. Now, Mr. Sachen, is it your testimony that you have never, at any time, seen the defendant, Wilkins, drunk?

A. No, I have never seen her drunk. No, sir.

Q. Before you began taking this statement from her did you ask her if she was drunk?

A. I might have, but I don't remember, sir.

Q. You think it's likely that you would have forgotten if you had done that?

A. It could have been I smelled liquor on her.

(Testimony of Joseph V. Sachen.)

Q. Did you ask her if she had been drinking?

A. I don't remember that either, sir. I probably did.

Q. You don't remember doing it? A. No.

Q. Do you remember everything she said?

A. In a signed statement.

Q. Yes? A. Yes. I had written it.

Q. Is it fair to state that you remember everything that she [176] said, but you don't remember what you said to her?

A. Well, no, I can't remember everything I said to her.

Q. Now, you stated, I believe, in response to Mr. Kirkland's last question to you on your direct testimony that after taking this signed statement, you contacted the ACS and the Postmaster at Kodiak, did you not?

A. I didn't contact them, no, sir.

Mr. Dunn: May I have the Government's Exhibit 1, please?

(Thereupon Government's Exhibit No. 1 was handed to Mr. Dunn, counsel for the defendant.)

Q. You don't think you testified to that effect, then?

A. I didn't testify that I contacted the ACS of Kodiak. No, I said one of the agents did.

Q. Is it now your testimony that your office, that is, the Office of the Federal Bureau of Investigation subsequent to the taking of this statement, contacted



(Testimony of Joseph V. Sachen.)

the Alaska Communications System and the postal authorities at Kodiak?      A. Yes, they did.

Q. The Alaska Communications System in Anchorage?      A. Yes.

Q. Also the Alaska Communications System in Kodiak?      A. Yes.

Q. Did you contact the postal authorities in Anchorage? Did your office contact the postal authorities in Anchorage?

A. In Anchorage? [177]

Q. Yes.      A. No, sir.

Q. Did your office contact telegraph agencies other than the ACS in Anchorage and Kodiak?

A. My office here? I don't think so, no.

Q. Did they contact any postal authority other than the postal authority at Kodiak?

A. I think Kodiak was the only place, yes, sir.

Q. Now, for what purposes were those contacts made?

Mr. Kirkland: Object to its immateriality.

The Court: What is the relevancy, counselor?

Mr. Dunn: Your Honor, the questions are preliminary. I am going to—I am trying to determine what facts in this statement were, if they be facts, were verified.

Mr. Kirkland: If the court please, I will assure him I will introduce that into evidence.

Mr. Dunn: Will you read back to me what Mr. Kirkland said, please? Well, that is certainly counsel's right, your Honor, but it is also my right to see

(Testimony of Joseph V. Sachen.)

what was done in connection with the verification of the statement that this witness elicited from the defendant, Wilkins.

The Court: Objection overruled. You may answer.

Mr. Dunn: You will have to re-read——

Mr. Kirkland: I'd like to interpose objection. The majority of this is actual facts—would be hearsay information [178] that would be elicited from this particular witness.

Mr. Dunn: Well, your Honor——

The Court: He has a right though he is bound by the answer. If he wants to be bound by the answer, that is the rule of evidence. He may do so. That is his prerogative. Objection overruled.

A. They were made to verify the statements that Lena Mae made in her signed statement.

Q. Well now, did your office make any investigation as to whether or not, on April 2, 1954, James Taylor Yokely had any girls working for him?

A. No.

Q. Did your office investigate whether or not Mr. Yokely had a house at 1806 East "I" St. in Anchorage?

A. When was that?

Q. At any time, subsequent to the taking of this statement.

A. I think Mr. Yokely at one time—I wasn't on the case—I think we had another charge against him and I think our office was informed that he lived this way, but as far as I—personally, I don't know. I have never——

(Testimony of Joseph V. Sachen.)

Q. Did you make any investigation, or did your office, of whether or not the defendant, Wilkins, purchased a ticket on Alaska Airlines from Anchorage to Fairbanks? A. Yes.

Q. Did you make any investigation, or did your office, of whether [179] James Yokely received any telephone calls from Kodiak, Alaska? A. Yes.

Q. Did you make any investigation, or did your office, of whether or not James Yokely lived with Lena Mae Wilkins in Fairbanks? A. Yes.

Q. Did you make any investigation of whether or not the defendant, Wilkins, traveled from Fairbanks to Anchorage? A. Yes.

Q. Make any investigation of whether or not, after having so traveled, she spent the night at Yokely's place?

A. We investigated that, yes.

Q. Make any investigation of whether or not, subsequent to that time she took the morning flight to Kodiak, Alaska? A. Yes.

Q. Did you make any investigation as to whether or not the defendant, Wilkins, was in fact in Kodiak, Alaska? A. Yes.

Q. Did you make any investigation as to whether or not there was a registered letter bearing the return address of one, Carl Samuels, mailed from Kodiak, Alaska, and addressed to James Yokely?

A. Yes.

Q. Did your office, or did you contact the Deputy Marshal, [180] Disney, in Kodiak concerning the

(Testimony of Joseph V. Sachen.)

activities of the defendant, Yokely, while she was in Kodiak, if she was, in fact?

A. Verify if she was in Kodiak?

Q. Did you contact the Deputy Marshal with respect to the defendant, Wilkins?

A. Yes, my office did.

Q. Did your office make any attempt to locate an individual by the name of Bill Gordon?

A. Yes.

Q. Did your office make any investigation as to whether or not James Yokely, in May or thereabouts of 1954, went to Portland, Oregon?

A. Yes.

Q. Did your office make any investigation as to whether or not Lena Mae Wilkins made \$8,000.00 in the months of June and July, 1954.

A. No.

Q. As an F.B.I. agent, Mr. Sachen, are you charged with any duty other than thoroughly investigating a matter to which you are assigned?

Mr. Kirkland: Object to its being immaterial.

Mr. Dunn: Not at all, I am, your Honor—The question is material on its face.

The Court: The court doesn't see it, counselor.

Mr. Dunn: I want to know, your Honor, what an F.B.I. [181] agent sets out to do when he is assigned to a case. I want to know this. If the court please, I want to know whether he sets out to investigate or whether he sets out to build up a case to be prosecuted. That is exactly what I want to know.

The Court: Counselor, what probative value would it have?

(Testimony of Joseph V. Sachen.)

Mr. Dunn: It would show whether or not this witness is a fair, impartial witness or whether or not he is an obviously biased witness.

The Court: In that respect counselor may inquire. Does the Government have to prove if the witness is biased or prejudiced?

Mr. Dunn: No, your Honor, but I have the right to prove if he is, if I can.

The Court: I agree. You have the right as defense counsel to bring out if it is bias or any relationship or any contractual relationship that may exist between his witness to show his interest in the outcome of the lawsuit.

Mr. Dunn: I take it, the question I last asked concerning the duty with which he was charged when he undertakes to investigate a case is certainly relevant as to the question of whether or not this witness is biased.

The Court: In that respect, counselor, don't you think it is the duty and responsibility of all agencies of the United States of America to try to get a conviction if they can? [182]

Mr. Dunn: I certainly do not.

The Court: Very well, you may answer the question, then.

Mr. Buckalew: Your Honor, I think I will have to take exception to His Honor's remark. He prejudicial to both defendants.

The Court: I asked him if he did and I was trying to ascertain what was in the counsel's mind. I didn't make any comments. It was just that I was



(Testimony of Joseph V. Sacken.)

trying to find out what counsel was trying to get at. Now, surely you don't take exception to that, do you, counselor?

Mr. Buckalew: I don't like to take exception to anything the court says.

The Court: You have a right to and also a duty. If by any chance the court is in error——

Mr. Buckalew: That is why I took the exception. I thought His Honor said that the agencies of the United States had a duty to investigate.

The Court: I asked him if he did not feel——

Mr. Buckalew: Is the question directed to counsel?

The Court: That is correct.

Mr. Dunn: I answered it.

The Court: Could counsel admit it?

Mr. Buckalew: I didn't hear counsel's answer.

The Court: Very well, then——

Mr. Kirkland: Excuse me. I would like to interpose an objection. First of all, if counsel is desirous of finding out [183] whether or not this witness is hostile or biased or trying to frame anyone or for any such reason of that under our rules of evidence, to come he should lay the proper foundation. Ask that question. Then, depending on the answer he gets, then to go into that point.

The Court: In that respect I believe counsel has laid the foundation, and the court wanted to ascertain what was in the mind of counsel to justify the question, and I am satisfied now. So therefore, you may answer the question.

(Testimony of Joseph V. Sachen.)

Q. (By Mr. Dunn): Do you remember the question, Mr. Sachen?

A. Yes, I think I do. I can answer it, I think. The duties of the F.B.I. agent are to protect the laws of the United States. He presents all the facts through the U. S. Attorney. No agent makes an opinion. He does give an opinion.

Q. Well, now, is that your answer?

A. That is right.

Q. Well, now, is it, then, your duty, as an F.B.I. agent to investigate for the purpose of eliciting and presenting the truth, the whole truth, and nothing but the truth? A. Right.

Q. That is your duty? A. Yes.

Q. Have you ever been told in the course of your training to——

Mr. Kirkland: Excuse me, your Honor. I object to the [184] immateriality of this. It has no bearing on the issues of the case. It's interesting, but time consuming.

The Court: It may be preliminary. I don't know. Is it preliminary, counsel?

Mr. Dunn: Well, I don't know, your Honor, but I have to object to your sustaining his objection since I haven't asked the question yet. All of these——

The Court: Of course that would be a useless act to do that, counselor.

Mr. Kirkland: Part of it has been asked. It's obvious what the rest is going to be.

The Court: It's anticipatory. Therefore, the

(Testimony of Joseph V. Sachen.)

court will reserve decision until the question is asked. Then you may make the proper objection.

Q. (By Mr. Dunn): Have you ever been instructed in part of your training that a witness, or a person who is giving you a statement, who proves false with respect to parts of his testimony is to be distrusted as to the whole?

Mr. Plummer: I object to the question. His instructions from the Department of Justice are confidential. They have to be given to this witness or anybody else.

The Court: Well, on that ground the court wouldn't sustain your objection, but if you make it on other grounds, the court would. [185]

Mr. Kirkland: Your Honor, I prefer it on the grounds that it is immaterial and irrelevant on the issues being tried before the court.

Q. Do you believe, then, Mr. Sachen——

Mr. Kirkland: Object on the grounds it is immaterial, irrelevant, and what the witness believes has nothing to do with what the witness believes.

The Court: Objection sustained, Mr. Dunn. It is a question of fact for the jury to determine whether or not the statement obtained from the defendant, Wilkins, was obtained in the sense it has any probative value, they must determine its question of fact and not his training. It has nothing to do with the admissibility or inadmissibility of the document, nor what weight they should give to it.

Mr. Dunn: I'd like to suggest, your Honor, that the questions as to this gentleman's training were

(Testimony of Joseph V. Sachen.)

preliminary merely to establishing the conditions under which the statement itself was taken. Now, the conditions under which the statement itself was taken certainly are not irrelevant.

The Court: In that respect, though, Mr. Dunn, haven't they been pretty well brought out. Would that be proper rebuttal on your part or your case in chief. If there is something irregular, assuming that there may be, the court doesn't say there is or there isn't.

Mr. Dunn: Your Honor, I don't feel I am limited on cross-examination to a scope more narrow than that of the direct [186] and Mr. Kirkland brought out on direct so much as he wanted of how the statement was taken.

The Court: I agree with counsel.

Mr. Kirkland: If the court please, I wouldn't object to his questions about how the statement was taken. That I have no objection to whatsoever.

Mr. Dunn: He doesn't have any objection to my question. He just objects to the fact I am going to ask a question.

The Court: In that respect, Mr. Dunn, I point out to you, you have gone into the training and education of the witness here, which I don't think is relevant and material to this particular case, nor can that in any way affect the ultimate outcome of this case. Now I agree with you, you have the right to go into any ramification of the procuring and submission of the statement, but as to his—what his

(Testimony of Joseph V. Sachen.)

instructions are, what he wasn't instructed to do, I don't believe that is material.

Mr. Dunn: The court so rules.

Q. (By Mr. Dunn): Mr. Sachen, did you ever have a conversation with any person who has testified during the course of this trial concerning the events which took place at the time you arrested Yokely, that conversation taking place after—several days probably after the arrest was made?

A. I might have. I don't remember.

Q. Might you remember who the person [187] was? A. No.

Q. Are you acquainted with a man, Richard Burge? A. Yes.

Q. Does that question refresh your memory?

A. Yes, it does.

Q. Will you tell the court the substance of that conversation?

The Court: Would you please state the time and place approximately.

A. On this I don't remember exactly—the exact date, but it was going out the post office building here, and Mr. Burge asked me some question. What I don't remember. He said he made a point to me. I don't remember the question—the questions that he asked me, and I said to him any law enforcement officer would have shot—I think I put it this way: would have shot Yokely for what he did to Lena Mae Wilkins that afternoon that I was there. I think that was the general gist of it. I don't remem-



(Testimony of Joseph V. Sachen.)

ber exactly. I made the point that I just held him and handcuffed him and put him in the car.

Q. You remember anything else you said to Mr. Burge at that time?

A. No, I don't remember anything else that I said to Mr. Burge at that time.

Q. Do you think that what you just stated you said to Richard Burge is a more accurate recital of what you said to him than the following statement: "I should have put a bullet through [188] your friend's head"?

A. No, I don't think I said, "Put a bullet through his head." I think I said, likely said, "He should have been shot," or I might have said, "Any other law enforcement officer would have put a bullet through his head," or "shot him," either one way or the other. I am not quite sure.

Q. Did you also say to Mr. Burge at that time that the F.B.I. does not protect criminals?

A. I don't think I said that. If I did, I don't know.

Q. Does that statement sound at all familiar to you. Does it even faintly ring a bell?

A. No, it doesn't.

Mr. Kirkland: I object to any further on the grounds it's immaterial.

The Court: Well, I think counsel has a right to go in to ascertain the attitude of this witness towards any of the defendants, show who is biased or prejudiced, if any. He has, and I think that is the

(Testimony of Joseph V. Sachen.)

purpose of examination. Therefore, the objection will be overruled.

Mr. Kirkland: I submit to the court—First of all, to lay the foundation, he would have to ask the witness one way or the other before that would become proper.

The Court: In that respect, I think technically Mr. Dunn was not proper, but he complied with the spirit of the intent. [189]

Q. (By Mr. Dunn): Now, didn't you testify on direct examination, Mr. Sachen, that after Yokely hit Lena Mae you stepped around and grabbed him? A. Yes, I did.

Q. You put handcuffs on him? A. Yes.

Q. You put him in the car? A. Right.

Q. Did you obtain any bruises or any marks of violence upon your person during the placing of handcuffs on Yokely?

A. No, I don't think I did.

Q. Did you have very much trouble doing it?

A. No, I didn't.

Mr. Dunn: I would like to ask Mr. Sachen to leave the stand, please.

(Thereupon, the witness left the stand.)

Mr. Dunn: May I approach the bench, your Honor?

The Court: You may.

(Thereupon, counsel for the defendant, Lena May Wilkins, approached the bench and the following discussion was had:)

Mr. Dunn: You ruled, your Honor, that I cannot ask any further questions concerning the training of an F.B.I. agent. I want to ask another question. I didn't want to violate the court ruling. That is the reason I asked to approach the bench. I want to ask this witness for the purpose of showing bias and prejudice [190] and utter cooperation with the prosecution, and equal antagonism to the defense whether or not in the course of his training, he was taught to listen to conversations at the time counsel approaches the bench when he is a witness on the stand is the reason I asked him to leave the stand. Now——

Mr. Kirkland: Wish to ask him what?

The Court: Read it back.

Mr. Plummer: Highly improper.

Mr. Kirkland: Object, I object.

The Court: What are your grounds?

Mr. Kirkland: My grounds are it's completely immaterial and irrelevant what his training was, what he was instructed to or not to do have nothing to do with hostility toward any defendant whatsoever, and nothing to the trial—irrelevant testimony; that it is immaterial testimony and further, that——

Mr. Plummer: He was instructed by the court to sit in that chair and not be released from the witness stand as yet and the first time he's been released is when you just did it.

The Court: One at a time.

Mr. Kirkland: Further, in the event—assuming that he were, which the Government absolutely does not admit and denies that it would be confidential

and of a matter required to be kept confidential, which are the rules and regulations of the Department of Justice, F.B.I.

Mr. Dunn: Your Honor, when we claim that privilege you [191] can rule on it at that time. If it's part of the training, it certainly is pertinent to show whether or not he's decidedly favored one side over the other and that his testimony would be treated accordingly.

The Court: Well, in that respect, counselor, I suggest you ask him.

Mr. Dunn: I want to ask him.

The Court: Would you ask him whether or not he favors one side over the other. The question asked is highly improper, highly prejudicial.

Mr. Dunn: Your Honor, if he is trained—if the whole course of his training is to be against the defense, that is a proper matter for the jury to consider in deciding what weight is to be given his testimony.

The Court: Excepting this, counselor, I point out to you, the question you asked is one of argument. You may argue at the conclusion of the trial. Did you notice the witness, Sachen, during the course of the trial, he listened to all the conversation. It's a question of argument.

Mr. Dunn: But I can't argue that. He was fully trained to do that unless that part of the training is in evidence, I can only comment on the evidence in argument.

Mr. Plummer: Your Honor, may I be heard. Mr. Sachen was ordered to sit on the witness stand.

The Court: That is unimportant from that viewpoint. [192]

Mr. Plummer: What should he do, your Honor?

The Court: Counsel is more or less arguing something that is not in evidence.

Mr. Dunn: I don't want to ask him whether or not he overheard. I want to ask him whether or not he was trained to deliberately listen.

The Court: I think that would be highly prejudicial and improper. I think you may ask him the question whether or not he does favor the Government over counsel.

Mr. Buckalew: Who wants to ask that question?

The Court: And the other question along about the same thing, but I think——

Mr. Dunn: May I ask him whether or not he did in fact listen, not whether he was so trained?

The Court: I have no objection to that because——

Mr. Kirkland: I object on the ground it's immaterial. What difference does it make. It's not supposed to be out of hearing of only the jury.

The Court: In that respect, counsel is making a point of it. I concede what you say, but if counsel wants to ask that question, I see no harm and I think he is right if he wants to in respect thereto.

Mr. Dunn: I contend it's relevant toward showing bias. Again I want the record to so show——

The Court: That is a matter of opinion, Mr. Dunn, it's [193] argumentative.

Mr. Kirkland: Am I allowed to object now, or is he allowed to ask the question?



(Testimony of Joseph V. Sachen.)

The Court: I think what you better do for your own sake is object now. I will overrule it. So, it won't be any question on that basis.

(Thereupon, the witness, Mr. Sachen, resumes the witness stand.)

Q. (By Mr. Dunn): Mr. Sachen, during the time that you have been a witness in this case, sitting where you are sitting now, have you deliberately listened to conferences between counsel and the bench, when counsel approached the bench?

A. At times I have, but I haven't paid too much attention to it.

Q. You did it deliberately, but you didn't pay too much attention. Is that your testimony?

A. I said I have listened to it. Yes, I have listened to testimony when counsel came up to the bench.

Q. Did you deliberately listen?

A. Deliberately—Yes, I'm quite sure. Yes, I have.

Q. But you didn't pay too much attention?

A. Yes.

Q. Now, did you read the typewritten statement which is Plaintiff's Exhibit 1, Government Exhibit 1, before you allowed the defendant, Wilkins to read it? [194]

A. Yes, I read it over. Yes.

Q. Now, didn't you testify that all of the changes made on Plaintiff's Exhibit 1 were made at the suggestion of the defendant, Wilkins?

(Testimony of Joseph V. Sachen.)

A. That is right, all but those that were erasures or typewritten errors in there.

Q. You didn't feel it necessary to correct those?

A. I did some, or corrected there on that Exhibit "A" there.

Q. You felt it necessary to correct some and not the others?

A. All those that I saw right at that time, yes, but she did all the corrections as far as the rest of that signed statement is concerned without my asking her to.

Q. Did you feel it necessary to correct all of them that you saw or to have them corrected?

A. The only ones that I corrected were those that were typographical errors.

Q. Irrespective of the nature of the error, did you feel it necessary to correct or have corrected all of the errors that you saw in the statement?

A. That is right.

Q. You did?           A. Yes.

Q. Did you notice that there's at least one error on that statement that is underlined that is not corrected—a typewritten error? [195]

A. Yes. Let me explain that to you, counsel. When that statement was written in longhand that underlined word means that that was misspelled and it was not a typographical error. It was misspelled in the longhand.

Q. May I see that exhibit again, please? (Exhibit was handed to counsel.) This is your longhand writing that you are talking about?

(Testimony of Joseph V. Sachen.)

A. That is right.

Q. "I have also been advised," and I am reading from Plaintiff's Exhibit 1, "that I may be represented by a lawyer," and it's your testimony that you misspelled the word "been"?

A. That is right.

Q. Did you give the longhand statement to an F. B. I. stenographer to copy or did you dictate it?

A. I gave it to her to copy.

Q. Then, that statement is in your words, is it not?      A. In my words?

Q. That is my question?

A. No, sir. That was the statement that Lena Mae gave to me and I wrote it in longhand, and gave it back to her and asked her if everything there was correct?

Q. But, is it not true, Mr. Sachen, that that statement as it exists is as you wrote it down?

A. By Mrs. Wilkins instructions. She told me.

Q. Is it not true, Mr. Sachen, that that statement as it now [196] exists, is as you wrote it down?

Mr. Kirkland: Object to it, your Honor. The witness has answered the question.

Mr. Dunn: He hasn't answered it, your Honor.

The Court: In that respect it's argumentative, counselor. The witness testified on direct examination for Mr. Kirkland; has testified on cross-examination for Mr. Buckalew, and now you are going into it for the third time. I think it's repetitious;

(Testimony of Joseph V. Sachen.)

therefore, the objection will be sustained. It's a question of fact for the jury to determine as to what is in that statement, based upon his testimony.

Mr. Dunn: The best way for the jury to determine the fact, your Honor, is for the jury to have the facts. The best way to get them is to have the statement.

The Court: That is. And they have already heard it, I think, three times.

Q. (By Mr. Dunn): Now, you testified, did you not, Mr. Sachen, that it took you approximately an hour and a half to write this statement in long-land?

A. I said between an hour and an hour and a half. I was making a guess on that.

Q. You used the word "approximately"?

A. Yes.

Q. Well, now, during that period of time, did you notice any [197] change in the attitude of the defendant, Wilkins? Did she become increasingly jumpy or did she remain placid, calm herself?

A. Just herself all the way through on the statement.

Q. Calm? A. That is right.

Q. She say anything to you about needing a drink?

A. She might have. I don't remember.

Q. Now, Mr. Sachen, I am addressing this question to you personally, not in your status as F.B.I. agent. I want you to divorce the two if you possibly

(Testimony of Joseph V. Sachen.)

can, and the question is this: Do you very deeply want these two people to be convicted?

Mr. Kirkland: Your Honor, I should probably object, but I'd like to hear the answer.

Mr. Dunn: So would I, your Honor, that is why I ask the question.

The Court: There being no objection, he may answer.

Mr. Kirkland: Your Honor, he is assuming the witness for his purposes. He's vouching as to the credibility; then he opens the door for me, I think, counsel.

Mr. Dunn: No doubt in my mind but what Mr. Kirkland gave me every advantage, your Honor.

The Court: Mr. Kirkland, we have to assume that counsel for the defendant knows what he's doing. I don't think it's your [198] job to try to ascertain that fact.

Witness Sachen: Say that question once more.

Mr. Dunn: Read it to him.

(Thereupon, the reporter read the question on line 9, of the previous page.)

A. Counsel, it does not make any matter to me whether they are convicted or not.

Q. You don't care?

A. Truly, that is up to the jury here.

Q. I know that.

A. I presented the facts as my job is laid to me. I present the facts as I see them, as truthfully as I can. I give them to the U. S. Attorney, and he



(Testimony of Joseph V. Sachen.)

makes the opinions in all our cases. As to me, I am sworn to protect the laws of the United States and do not form an opinion. Does that answer your question?

Q. You are not sworn not to have desires, are you?           A. No.

Q. Then, is your answer to my question——

The Court: He answered the question, counselor. I think you are going far afield if you go any further than that.

Mr. Dunn: All right, your Honor.

Q. Well, isn't it true, Mr. Sachen, that you personally, possibly as an F.B.I. agent—now, I'm no longer divorcing the man from the job—got the two back together. Isn't it true [199] that you personally urged the District Attorney's office to take steps to bring the present indictment into being?

A. No, sir.

Q. You did not?           A. I did not.

Q. You didn't cooperate with them fully?

A. Oh, yes, they're my bosses. By the way——

Mr. Kirkland: He is arguing with the witness and there's certainly a difference between cooperating and urging.

The Court: Objection sustained. Highly improper.

Q. Isn't it true, and do you not know of your own personal knowledge—I will rephrase that question.

Do you know whether or not, subsequent to the

(Testimony of Joseph V. Sachen.)

taking of that statement by yourself, that the defendant Wilkins denied the truth of it?

A. I can't follow you there, counsel.

Q. Do you know whether or not the defendant, Wilkins, denied the truth of that statement after she gave it to you?

A. She never did deny the truth to me of that statement.

Q. Did she ever deny it that you know of?

A. Not that I know of, no.

Q. Not that you know? A. No.

Q. You're certain? A. Certain. [200]

Q. Is it, or is it not true, that your office is prepared, in the event of an acquittal here to proceed with another indictment against these same defendants?

Mr. Kirkland: Object to the question, your Honor, as highly immaterial and irrelevant. That decision lies with the United States Attorney's Office.

The Court: Objection sustained.

Mr. Kirkland: Counsel knows that also.

Mr. Dunn: I didn't ask about the United States Attorney's Office, your Honor.

The Court: I know. Objection sustained. The court feels it's improper. We are trying one case at a time. That is all we are concerned with, is this case at this time.

Q. (By Mr. Dunn): Now, Mr. Sachen, you testified that you smelled liquor on the defendant Wilkins' breath at the time she was giving you the

(Testimony of Joseph V. Sachen.)

statement, did you not?           A. That is right, sir.

Q. And how far away was she from you at that time?

A. I said that once before, and that is, I'd say about two feet, sir.

Q. And you could smell it two feet away?

A. That is right.

Q. Now, most of these questions are going to be repetitious for you, Mr. Sachen. [201]

A. That is all right.

Mr. Kirkland: I am going to object to them then—most of these questions.

The Court: Objection overruled because these questions were asked before the court and not before the jury. The jury has a right.

Mr. Kirkland: Oh, I thought in repetition of what Mr. Buckalew had asked.

Mr. Dunn: All right. Now——

Mr. Kirkland: Go ahead.

Q. Now, at the time you were taking this statement from the defendant, what was her general appearance?

A. It looked like she was drinking and disheveled.

Q. Disheveled?

A. Disheveled, that is it, yes.

Q. No doubt in your mind about that. You don't want to think about it any longer or anything?

The Court: Counsel, he answered the question.

Mr. Dunn: I just asked him another one, your Honor.

(Testimony of Joseph V. Sachen.)

The Court: Excepting, it's repetitious, time-consuming.

Mr. Dunn: I didn't think it was repetitious.

The Court: You asked what the appearance of the defendant, Wilkins, was and he said that she had looked disheveled been drinking and disheveled. Then you asked, "You don't want to consider it longer, do you?" [202]

Mr. Dunn: Ask him whether or not there was any doubt in his mind about it?

The Court: In that you are bound by his answer. He said he was, so why be argumentative about an answer that is apparently in your favor.

Q. At the time you took the statement from her, did you ask her what she had been doing all night?

A. No, I didn't.

Q. Did you ask her how much she'd had to drink? A. I don't think I did.

Q. You don't think you did? A. No.

Q. Whose pen did Lena Mae use to sign that statement? A. I think it was my pen.

Q. Pretty good pen?

A. Yes, it was a very good pen.

Q. Parker 51, if I remember correctly?

A. Right.

Q. Did she give it back? A. Yes.

Q. Now, did you not testify previously that you did not hear Judge Hartlieb, the United States Commissioner, ask the defendant, Wilkins, whether or not she was drunk?

A. That is right. I did not hear.

(Testimony of Joseph V. Sachen.)

Q. Now, speaking of the time when the defendant, Wilkins, [203] yourself, Mr. Fitzgerald from the District Attorney's Office, and I believe, Officer Pass, were before the United States Commissioner, how far were you from the defendant, Wilkins?

A. At the Commissioner's Office where she made the affidavit?

Q. Yes.

A. Oh, about four feet—three or four feet, approximately that.

Q. Then you would be in position, would you not, to hear anything that Judge Hartlieb would say?

A. Yes, I would.

Q. You think you heard everything he said?

A. No, I don't think I did.

Q. But you were in a position to? A. Yes.

Q. You weren't deliberately listening to him?

A. Right.

Q. Well—now then, at the time that Lena Mae gave you this statement, and particularly at the time she signed it, was she an exceptionally angry woman? A. No, sir.

Q. She was not? A. No, sir.

Q. Did she seem appreciably aggravated or upset?

A. Oh, I think she was upset, but not appreciably, no.

Q. Repeating an old question again. Would you say that her [204] aggravation and the degree to which she was upset was immeasurable?

A. Yes.



(Testimony of Joseph V. Sachen.)

Q. Scarcely noticeable? A. That is right.

Q. Are you an expert? A. No, I am not.

Q. At observing abnormal behavior in an individual? A. No, I am not, sir.

Q. Are you an expert in deciding whether or not an individual is drunk? A. No, I am not, sir.

Mr. Kirkland: Your Honor, I object to any further questions along those lines. I don't want to hide anything, but everything is time-consuming and I must object.

The Court: In that respect, counselor, this is cross-examination and many of these questions were brought out before the court. The jury has the right to hear on cross-examination everything that was brought out before the court concerning the admissibility of evidence, and although it is time-consuming and a bit repetitious, the court must see that the defendant gets a fair trial. That is the position the court takes.

Mr. Dunn: Your Honor, I know that I am not asking them all. I am culling it down.

The Court: Let's proceed then, please. [205]

Mr. Dunn: What was the last question I asked the witness?

The Court: Asked him whether or not he was an expert on a person being drunk.

Q. (By Mr. Dunn): You said you were not?

A. That is right, sir.

Q. Well, now, you testified that Lena Mae was not drunk. A. That is right, sir.

Q. Then, it is true, is it not, that that is at best

(Testimony of Joseph V. Sachen.)

an inexpert's opinion?           A. That is right.

Q. That is true?           A. Yes.

Q. Now, did Mr. Kirkland warn you that I had ordered a transcript of your previous testimony and tell you how to answer the questions that I would ask you?           A. No, sir.

Mr. Kirkland: Object to the form of the question.

The Court: In what respect, counselor?

Mr. Kirkland: Counsel says, did I warn him. I suggest if counsel wants to go into such information as that, he call myself.

Mr. Dunn: I would enjoy it, your Honor.

Mr. Kirkland: I will submit to it.

The Court: This is cross-examination and I think that [206] it may be a proper subject. Therefore, objection is overruled. It's already been answered.

Mr. Dunn: No further questions, your Honor.

The Court: Any redirect, counsel?

Mr. Kirkland: Yes, your Honor.

The Court: You may inquire.

Mr. Kirkland: Before I ask the first question—counsel is through now, for his cross of this witness?

The Court: Yes. You have him on redirect.

### Redirect Examination

By Mr. Kirkland:

Q. Mr. Sachen, it appears as though counsel offered it; however, you advised me of a discrepancy in your testimony which was accidental that you were desirous of correcting. Is that not true?

(Testimony of Joseph V. Sachen.)

A. That is right.

Q. And will you tell the court and jury as to where that discrepancy was?

A. On signing this statement, right here on Exhibit "A," when she signed it in our office. Number 2 is when Mr. Pass handed Yokely the warrant for his arrest, I stated to him that it was a white slave traffic act, and we have a complaint [207] and warrant issued for him; that he's arrested for transporting a woman from Anchorage to Fairbanks and Fairbanks to Kodiak, on two counts.

Mr. Dunn: Move to strike the answer of the witness, your Honor, on the ground it is not proper redirect examination. It is cross-examination.

The Court: Objection overruled.

Q. (By Mr. Kirkland): Mr. Sachen, what did the defendant, Yokely have in his hand, if anything, when you arrested him at his home?

A. Well, now, when I knocked at the bathroom door and I told Yokely I was the F.B.I. agent, he came out. He came out with a razor in his hand, and he asked me——

Q. Excuse me, Mr. Sachen. I will ask you the next question. Now, I believe in response to Mr. Dunn's testimony, you stated that you did not have any trouble taking the defendant Yokely into custody. Is that correct?      A. That is right.

Q. You were a football player?

Mr. Buckalew: Objection.

The Court: Objection sustained. If you want to know, ask him his height and weight.

(Testimony of Joseph V. Sachen.)

Mr. Kirkland: Well, the jury can observe that. The question is his having trouble arresting the defendant.

Mr. Buckalew: Object to that. He said he didn't have [208] any trouble arresting him. Counsel is testifying.

The Court: That is correct. Objection sustained.

Mr. Kirkland: Excuse me. If the court please, I would oppose it. Now, we have two counsel here. I suppose Mr. Dunn was binding both counsel here when he was going into these questions at that time. He was assuming the witness when he got beyond the scope of direct. As his own he opened the direct.

The Court: Of course, that is why you have the right of redirect. You may ask that, but that is the chance that counsel for co-defendants takes and they haven't objected, I don't think, to your question, excepting the one question to which the court had to sustain it because it's irrelevant and immaterial; as, "football player"; that hasn't any relevancy to it. Is there any recross?

Mr. Kirkland: I am not through.

The Court: Oh, I beg your pardon. I thought you were through.

Mr. Kirkland: No further redirect examination.

The Court: Any recross?

(Testimony of Joseph V. Sachen.)

Recross-Examination

By Mr. Buckalew:

Q. Mr. Sachen, do you remember that Mr. Yokely came out of the bathroom with soap [209] on his face?      A. No, he did not.

Q. You want to think about that a minute?

Mr. Kirkland: Object.

A. I have thought about it.

Mr. Kirkland: The witness has answered. Object to it.

The Court: Objection sustained.

Q. Now, Mr. Sachen, as a matter of fact, did Mr. Yokely leave the razor in the bathroom?

A. No.

Q. You took it away from him?      A. No.

Mr. Buckalew: No further questions.

The Court: Any further questions, Mr. Dunn?

Mr. Dunn: No, your Honor.

The Court: Very well. You may be excused.

(Thereupon, the witness was excused and left the stand.)

The Court: I point out to both counsel that the court must adjourn at 4:30 today because of other business before the court, so the court will stand in recess for ten minutes. Recessed at 3:32 o'clock p.m.

(Whereupon at 3:42 o'clock p.m., December 22, 1954, court reconvenes, following a 10-minute recess, the jury having been recalled to



the jury box, and the following proceedings were [210] had:)

The Court: Let the record show all the jurors are back and present in the box. You may call your next witness.

Mr. Kirkland: I would like to call Mr. M. L. Briggs.

The Court: Mr. Briggs may come forward.

### MAURICE L. BRIGGS

called as a witness on behalf of the Government, and being first duly sworn, testifies as follows:

The Court: You may proceed, counselor.

### Direct Examination

By Mr. Kirkland:

Q. State your name, please, sir.

A. Maurice L. Briggs.

Q. M-a-u-r-i-c-e L. B-r-i-g-g-s? A. Right.

Q. Your occupation, sir? A. Postmaster.

Q. Where? A. Kodiak, Alaska.

Q. And do you have with you your records pertaining to a registered letter, I believe it is your registry No. 1813? A. I have.

Q. Will you tell me what that registry is?

A. I am unable to give that information on account of privacy of [211] post office affairs connected with the mails without an order from the court to do so.

Q. And I believe your postal regulations provide that it is permissible to testify to that information

(Testimony of Maurice L. Briggs.)

if the court directs you to. You have a copy of it, sir.

A. That is right.

Q. Might I see it. (Handed to counsel for the plaintiff.)

Mr. Kirkland: If the court please, could I just submit a copy of this to His Honor to read the regulations.

Mr. Buckalew: Your Honor, could defense counsel look at it?

The Court: Yes, you may. (Copy handed to the court.) To save the court's time, could you advise the court which one?

A. Top of the page, to the left.

The Court: May I point out to you—Mr. Buckalew, would you please come forward and I will show it to you.

Mr. Buckalew: I wanted my co-counsel to look at it, too. (Document handed to Mr. Buckalew.)

The Court: What position do you take Mr. Buckalew; Mr. Dunn?

Mr. Buckalew: We haven't had a chance to examine it thoroughly, your Honor.

Mr. Kirkland: While they're examining it—it's a matter of law and I request the court to direct the witness to answer the question. [212]

Mr. Dunn: Your Honor, that is rather premature. We haven't had a chance to examine the regulation.

The Court: Very well.

Mr. Kirkland: If the court please, while he's examining the regulation, I'd like to point out to

(Testimony of Maurice L. Briggs.)

the court, the only person who would be authorized to object to any such testimony would be the legal counsel for the United States Government, which is the United States Attorney's Office. Defense counsel could not interpose objection.

The Court: Well, but the court wants to be fair with counsel. What is your position, Mr. Dunn?

Mr. Dunn: It seems to be proper, your Honor, that counsel approach the bench and that the Government make an offer of proof prior to the court's ruling. I don't see how the court would know the proper priority of his ruling until the court first knew what counsel proposes to prove.

The Court: Excepting this, that the Government doesn't have to do that, do they?

Mr. Dunn: No, I meant it's merely a suggestion to the court.

The Court: Well, the court's been through this before. It's the opinion of the court that this witness should be directed and the court does hereby direct you to open your books to that effect to evidence what information counsel for the Government does want to elicit from you. [213]

Q. (By Mr. Kirkland): Mr. Briggs, you do have the receipt for Registry No. 1813?

A. 1813?

Q. Yes, I believe that is it.

A. Yes, sir.

Q. And to whom was that addressed to, sir?

A. Addressed to James Yokely, General Delivery, Anchorage.

(Testimony of Maurice L. Briggs.)

Q. And what was the return address to that?

A. Carl Samuels, General Delivery, Kodiak.

The Court: Is it Carl or—Mr. Briggs, I didn't get that.

A. Carl.

The Court: Thank you.

Q. And was that insured, sir?

A. I beg your pardon?

Q. Was that insured? A. A register?

Q. Yes, sir. A. Yes.

Q. Now, for how much was it insured?

A. It was registered for a \$100. There is a difference between insured and registry of mail.

Q. I apologize, sir. I am not familiar with your terms. Might I examine that please, sir?

The Court: You may. (Given to Mr. Kirkland.)

Mr. Kirkland: If the court please, I'd like to show this to counsel and offer it into evidence?

The Court: Well—very well, you may show it to counsel. It's difficult to offer that in evidence without offering the rest of the book and I do feel that is proper. I wonder if you couldn't get an exact certified copy of this and I am sure counsel would stipulate to that. I don't think Mr. Briggs would want to leave the book here.

A. No, it is impossible.

Mr. Buckalew: Your Honor, this stage of the proceedings the defense objects to as proper foundation has not been laid. We don't know, for example, who prepared the receipt.

The Court: I think you should. Objection is well

(Testimony of Maurice L. Briggs.)

taken. You should lay a better foundation in that respect.

Mr. Buckalew: We don't know who had custody of the book prior to the time it got to the court room.

The Court: Well, I have sustained your objection.

Q. (By Mr. Kirkland): Sir, are those the final records of the Kodiak Post Office Department?

A. I beg your pardon?

Q. Is this book part of your official records of your postal department at Kodiak, Alaska?

A. That is correct.

Q. And you are the postmaster at Kodiak? [215]

A. Yes, sir.

Q. Thank you, sir.

The Court: Well, counsel failed to ask whether or not those are the books that are kept in the regular course of business; who filled out the receipt. I think that counsel for the defense are entitled to know that, Mr. Kirkland. Is this the book that is used and kept in the ordinary course of post office business? You haven't asked it. Records——

Mr. Kirkland: Very well. I thought the official records were sufficient.

Q. Is this the book that is kept in your ordinary course of postal business in Kodiak?

A. Yes, sir. That is the record that is made at the time of the registration and that is kept in the office as a matter of record for several years.



(Testimony of Maurice L. Briggs.)

The Court: Mr. Briggs, who prepared that receipt for the registry?

A. That particular register was handled by a clerk in the post office.

The Court: And is she an employee of the post office?

A. Correct.

The Court: And she works under your jurisdiction and supervision?

A. That is right.

The Court: This entry was made in the ordinary course [216] of business? A. That is right.

The Court: Mr. Dunn—Mr. Buckalew, wouldn't you stipulate that an exact certified copy of that may be——

Mr. Buckalew: To save time, we would, your Honor. Let me check.

The Court: Very well. \* \* \* You have any objection now?

Mr. Buckalew: I do not.

The Court: There being no objection, it is stipulated by counsel that an exact certified copy of this particular one may be prepared and submitted. What is the date on that, counselor, please?

The Clerk: The date on the top is 4-19-54.

The Court: Thank you very much.

Mr. Dunn: Your Honor, I want no question to arise later concerning this stipulation. Now, we have no objection to a copy being submitted. In other words, we are willing to substitute a true copy

(Testimony of Maurice L. Briggs.)

for the original, but we are not stipulating that either the original or the copy is admissible.

The Court: That is right. The court understands that and you are not binding yourself in that respect. I think what you better do is have an exact certified copy prepared by the District Attorney's Office. They, in turn, can submit it to the attorneys for the defendant. Then, at that time it may be offered. [217]

The Clerk: It shouldn't be offered.

The Court: No, I don't think so because it is an official document of Mr. Briggs. Any more questions, Mr. Kirkland?

Mr. Kirkland: No further direct.

The Court: Do you have any cross, Mr. Buckalew?

Mr. Buckalew: I don't have any, your Honor.

The Court: Mr. Dunn?

### Cross-Examination

By Mr. Dunn:

Q. What was the name of the clerk who prepared this particular receipt?

A. Mrs. Getty Briggs.

Q. How long has she been with the Post Office Department?      A. About ten years.

Q. Was she steadily employed all that time?

A. That is correct.

Q. What do you call that—a receipt, is that what it is?      A. That is correct.

(Testimony of Maurice L. Briggs.)

Q. That receipt shows that a fee of 85 cents was paid. Do you know who paid that fee?

A. The party who registered the letter would pay the fee.

Q. Well, who was the party that registered the letter; that is, [218] the party who paid the fee?

A. That would be the party who paid the fee.

Q. Then, who is that party? Who was it?

A. I didn't register the letter myself and the return address says, Carl Samuels.

Q. Is your answer to my question that you don't know?

A. That is about as direct an answer as I can give you, is what I have already have given. I would have to take the word of someone else or take the word of the—or the record of the return address.

Q. I'm simply trying to get this as accurately as I can, Mr. Briggs. Now is this your testimony. The receipt shows that Carl Samuels brought that letter to the Post Office Department?

A. Not necessarily.

Q. It does not, and somebody besides Carl Samuels may have brought that to the post office?

A. Someone might have registered that letter and mailed it for another party.

Q. And who in fact mailed it. It is in fact unknown to you. Is that true?

A. That is correct. I personally do not know.

Q. As far as you know anybody in Kodiak could have mailed that letter?

A. I didn't see it mailed. [219]

(Testimony of Maurice L. Briggs.)

Q. Answer my question, yes or no.

The Court: Argumentative, counsel—time-consuming and obviously already answered. He doesn't know who mailed it.

Q. Are post offices, Mr. Briggs, classified as first-class, second-class, and so on?

Mr. Kirkland: I object to that, your Honor.

The Court: What is the relevancy, counselor?

Mr. Dunn: It is preliminary, your Honor. I am trying to find out whether or not the post office—it is preliminary to discovering whether or not the post office at Kodiak is a post office which may be governed by postal regulations to the effect that the postal authorities are required to determine who accepted a registered letter.

The Court: Would you just ask him, then. Ask him direct to save time.

Q. Under the regulations governing the post office at Kodiak, are the postal employees charged with discovering who sends a registered letter?

A. We are not required that identity be furnished.

Mr. Dunn: No further questions.

The Court: That is all. You may step down.

(Thereupon, the witness was excused and left the stand.)

The Court: May this witness be excused to return home?

Mr. Kirkland: As far as the Government is concerned. I think Mr. Plummer is having a copy made

of this. Possibly he [220] should remain here until we get it; otherwise, we might have——

The Court: I am sure he will do that. He wouldn't go home without it. Mr. Dunn, Mr. Buckalew, do you excuse this witness so he may return home?

Mr. Buckalew: As far as I am concerned.

Mr. Dunn: Yes, sir.

The Court: Thank you for coming, Mr. Briggs. You may call your next witness. Let's move right along, counselor, please.

Mr. Kirkland: Yes, your Honor. I'd like to call Mr. Forbes Baker.

### FORBES D. BAKER

called as a witness on behalf of the Government, and being first duly sworn, testifies as follows on

#### Direct Examination

By Mr. Kirkland:

Q. State your name, please, sir.

A. Forbes D. Baker.

Q. State your occupation.

A. Station Manager, Alaska Airlines, Fairbanks.

Q. Fairbanks, Alaska? A. That is correct.

Q. Sir, do you have with you records pertaining to the manifest for Flight No. 4 on April 14, 1954? A. I do. [221]

Q. And you have those with you?

A. They are before me.

Q. And are those your official airlines records?



(Testimony of Forbes D. Baker.)

A. These are the station copies of passenger manifest on our flights; in this case Flight 4.

Q. And are they made in your usual and ordinary course of business? A. They are.

Q. And they have been in possession of the airlines? A. At all times, yes.

Q. Is the name, Wilkins, reflected on that manifest?

Mr. Dunn: Object to that, your Honor, prior to establishing what happened to the original of these things. I understood the witness to say these are copies.

The Court: That is right.

A. These are carbon copies.

The Court: But counsel is correct if he wants to be technically correct. You may ascertain what happened to the original.

Q. (By Mr. Kirkland): Where is the original?

A. The originals have gone forward to our general offices in Seattle, Washington.

Q. In Seattle? A. Yes. [222]

Mr. Dunn: Your Honor, I object to any further questioning concerning this copy here, basing my objection to the best evidence rule.

The Court: Objection is overruled.

Mr. Buckalew: Your Honor, I'd like to make one more objection. I think that the laws of Alaska require corporations to keep their original records in Alaska.

The Court: In that respect we are not ruling

(Testimony of Forbes D. Baker.)

upon that point at the present time. Objection is overruled. You may proceed.

Q. (By Mr. Kirkland): Is the name, Wilkins, reflected on those records, sir? A. Yes, it is.

Q. What does it reflect as to the name, Wilkins?

A. We have a passenger reflected as Wilkins, Mickey.

Q. Mickey's the first name given?

A. Yes, sir. It reflects she was traveling on our ticket, Form 272, No. 32269S. It also reflects that she was boarded on Flight 4 of the 14th of April, 1954.

Q. Now, where does that flight go to?

A. It originates in Fairbanks and goes to Anchorage.

Q. And that was for the 14th of April. Is that correct, sir? A. That is correct.

Q. Before I offer this into evidence, would you have any objections if I were to introduce your records? [223] A. No, sir.

Q. You would have none? A. No, sir.

Q. Thank you sir. (Papers were handed to Mr. Kirkland.)

The Court: Do you have any further objection, counsel?

Mr. Dunn: Is the offer made, your Honor?

The Court: Do you offer it in evidence, counselor?

Mr. Kirkland: Yes, your Honor.

Mr. Buckalew: Your Honor, from the first inspection of it, I am going to object on the ground

(Testimony of Forbes D. Baker.)

that I can't tell whether it is a carbon. Part of it is a carbon copy. When they get down to "Mickey Wilkins," it is pencilled in.

The Court: May I see it, please. (Papers handed to the court.)

Mr. Dunn: I want the record to show my best evidence objection.

The Court: It already does that, counselor. Mr. Baker, can you explain why all the names preceding Nelson were made by the typewriter and the last two are made in pencil or pen as it appears.

A. That indicates that the passengers—these last two passengers who are pencilled in, arrived at the field after the city ticket office had given the field ticket office the passenger count for that flight.

The Court: Is that done in the regular course of business?

A. Yes, sir. [224]

The Court: I call to counsel's attention that is indicative of practically every other entry in this entire book. The last one or two, or maybe three and a half dozen names, have been put in by pencil, but that was done by pencil in the regular course of business and not prefabricated by you for this trial.

A. That is correct.

The Court: Do you have any other objection?

Mr. Buckalew: No, your Honor.

Mr. Dunn: No, your Honor.

The Court: Objection overruled. It may be ad-

(Testimony of Forbes D. Baker.)

mitted and marked Plaintiff's Exhibit Number 3. The second exhibit for the——

The Clerk: Is this page to be removed from the file?

The Court: What is your position?

Q. (By Mr. Kirkland): What is the position?

A. I would like to have a record for my file, whether it is a carbon copy of that or that one.

Q. This will be returned to you as soon as this trial is over. A. I understand.

The Court: But, you would like to have it in the meantime?

A. I would like to have it in order that my files be complete in Fairbanks.

The Court: That being the case, then, I think, under [225] the facts of this case, it would be better for the jurors to have this copy and counsel for the Government make a copy and then you will ultimately get this back.

A. Fine.

The Court: Very well. Will you do that, then, Mr. Kirkland?

Mr. Kirkland: Make a copy of that, your Honor?

The Court: Yes, that is correct.

Mr. Kirkland: Yes, sir.

The Court: What do you call that, Mr. Baker?

A. That is the passenger manifest for Flight 4 of April 14, 1954.

Mr. Kirkland: Your Honor, may the bailiff take

(Testimony of Forbes D. Baker.)

that down to the office and request one of our secretaries to so do.

The Court: Yes.

Mr. Buckalew: Your Honor, I am afraid we are going to need that form to cross-examine the witness.

The Court: Well, what time does your flight leave today, Mr. Baker?

A. I can get out at 5:30 or 6:00 o'clock.

The Court: That being the case, then——

Mr. Kirkland: If the court please, if counsel will stipulate, I can at least argue as to the contents without introducing them in evidence. I'm sure the jurors won't forget.

Mr. Buckalew: Counsel can't stipulate.

The Court: That being the case, you can take it down [226] after the conclusion of trial; make the form——

The Clerk: You want that copy marked?

The Court: Yes, ma'am, if you will please. You may proceed then, Mr. Kirkland.

Q. (By Mr. Kirkland): Mr. Baker, you reside at Fairbanks. Is that not correct?

A. That is correct.

Q. Have you ever seen either or both of these defendants in Fairbanks? A. Yes, I have.

Q. Do you remember when, sir?

A. Not exactly. I know I see quite a few faces in Fairbanks. I've traveled. There's people traveling through.

Q. But those faces are familiar to you in Fair-



(Testimony of Forbes D. Baker.)

banks?           A. They are.

Mr. Kirkland: No further questions.

The Court: You may cross-examine.

Mr. Buckalew: Could we have just a second, your Honor? Could I have a copy of that manifest?

The Court: Will you please hand him Exhibit No. 3?

(Exhibit No. 3 handed to counsel for the defendant.) [227]

### Cross-Examination

By Mr. Buckalew:

Q. Mr. Baker, when did you see either one of these people in Fairbanks?

A. Well, I recognize them. As I told you before, I see a lot of people and I do recognize them as having passed through our offices out at the terminal.

Q. You know what date it was?

A. No, I don't. I couldn't swear to that.

Q. Could it have been last year?

A. No, I don't think so. It's fairly fresh in my memory.

Q. Could you give us some idea what month it was?

A. As I recall, it was during last summer.

Q. See them together?           A. Sir?

Q. Did you see them together?

A. Did I see them together?

Q. Yes.

A. As I recall, I did. I wouldn't swear to it.

(Testimony of Forbes D. Baker.)

Q. How about—What does Lt. Col. Burkley look like. Do you know?

A. No. Probably if I saw him I would recognize him. As far as connecting these peoples' names to their faces, I wouldn't have been able to do that unless—In other words, I didn't know their names, but I did recognize their faces.

Q. When did you first establish this? [228]

A. When? Establish what?

Q. The recognition. Just from the witness stand? Did Mr. Sachen point them out to you in the hall or just how did it happen?

A. No. I recognized them when I first saw them and I was also shown some pictures of them in Fairbanks.

Q. Now, Mr. Baker, when were you shown these pictures in Fairbanks? Also, how many pictures were you shown? A. As I recall, one of each.

Q. Did they show you any other pictures? Any other colored, or just a picture of this woman?

A. As I recall, it was just the picture of the one woman.

Q. Just the one picture?

A. The one picture.

Q. They asked you if you had ever seen her?

A. That is right.

Q. Ask you when you had seen her?

A. Yes, as I recall.

Q. And you couldn't tell them when you had seen them?

A. Not exactly. I told them I had seen them during the previous summer.

(Testimony of Forbes D. Baker.)

Q. During the previous summer? What year was that?

A. Well, this question was put to me a short while back—within the last couple of months and the previous summer would be the summer of 1954. [229]

Q. Did they ask you if you had seen this woman in Fairbanks in April?

A. I don't recall. It came up during the course of the questioning that they had traveled in April.

Q. Now does your memory—is your identification of this woman based on the picture that was shown to you in Fairbanks?

A. As I recall, I told the person who questioned me, that when I did see the picture, that I have seen the woman before, and I was quite sure she had traveled on our airline.

Q. But she could have traveled on your airline anytime?      A. That is probable.

Q. Is it your testimony now that you only seen this woman once in Fairbanks and today in the court room?

A. No, I've seen her yesterday and——

Q. Outside of the time you've been here for this trial.

A. I could have seen her several times in Fairbanks. The face was familiar to me.

Q. How about the body? Is that familiar to you?

A. No, I don't see the body of the passengers. They stand behind a counter.

(Testimony of Forbes D. Baker.)

Mr. Buckalew: Your Honor, I am sorry about that. I meant by body, the height.

Q. Now, what was it about this woman that was so fixed in your mind? [230]

A. Her facial appearance.

Q. You saw this woman one time and you are positive you can identify her now in court?

The Court: That is not his testimony. You are misstating his testimony.

Q. Who brought the picture to you in Fairbanks, Mr. Baker? A. An F.B.I. agent.

Q. Remember what his name was?

A. John Woresham.

Q. You did see this woman in the ticket office?

A. No, I saw her out at the field.

Q. What was she doing?

A. As I recall, she was being checked in as a passenger on our flight.

Q. How many passengers do you see in one month?

A. I'd hesitate to guess even. We haul quite a few passengers. A great deal of them I do not see.

Q. How many passengers have you observed passing through there since the time you saw this woman?

Mr. Kirkland: Your Honor, I object. It's immaterial.

The Court: Objection sustained. You have a right, Mr. Buckalew to go into and ascertain the recognition of this witness, by facts that may have existed prior or subsequent to, but I think you have

(Testimony of Forbes D. Baker.)

gone beyond the normal limit in that respect. [231]

Q. (By Mr. Buckalew): Do the features of a Negro woman—are they fixed on your mind more than they are fixed on a white woman?

A. No, I think the opposite is true, but not in all cases.

Q. I see. But the features of a white woman would stay fixed in your mind longer than those in a colored woman?

The Court: He's answered the question.

A. Not in all cases.

Q. Now, can you explain to me why, in this particular case, you have an exception?

Mr. Kirkland: Your Honor, I object to any further questioning along that line. The witness has testified to all he knows in the matter.

The Court: Objection sustained.

Mr. Buckalew: This sort of amuses me. I'm just trying to——

Mr. Kirkland: If the court please, we are not here to be amused. We are here to conduct a trial.

The Court: That is correct. Objection sustained.

Q. (By Mr. Buckalew): How many times have you seen the gentleman over there with the brown suit?

A. I've seen him several times in Fairbanks International Airport.

Q. What did the F.B.I. agent tell you when you identified the pictures? [232]

Mr. Kirkland: Object to that as immaterial.



(Testimony of Forbes D. Baker.)

The Court: Objection sustained. It can't have any relevancy whatsoever, counsel.

Mr. Buckalew: Well, I think it might, your Honor.

The Court: Objection sustained.

Q. The F.B.I. agent had one picture of this man?

A. As I recall, I think there was one picture.

Q. What kind of picture was it?

A. Explain your question.

Q. Well, I mean was it a portrait from the waist up or was it a picture of the man standing in back of a blackboard—his whole body.

A. I think it was a picture from about here on up with some numbers in front of him.

Mr. Buckalew: Your Honor, I can't see anything that funny.

Mr. Kirkland: I can.

The Court: Apparently, counsel, it's a matter of opinion.

Q. And they just showed you the two pictures?

A. One picture of the gentleman and one picture of the lady, yes.

Q. Is the picture that was shown to you indicate that this man had a mustache?

Mr. Kirkland: Your Honor, I object to any further questions along this line because the witness testified [233] the identity of this person as independent of the photograph that was shown to him.

The Court: I point out to you, Mr. Buckalew, in that respect he has indicated he has seen this de-

(Testimony of Forbes D. Baker.)

fendant several times in Fairbanks. He doesn't rely upon the picture by itself; therefore, the objection will be sustained. If by chance you only identified it from the picture, then your question would have been proper.

Mr. Buckalew: The only thing I was trying to ascertain, your Honor, was whether or not this identity—I don't care what the witness says—I want to ascertain what importance, and the fact you can show the two pictures of these two people.

The Court: Of course, I think that is understood by the record of your questions, but I feel that the objection was properly sustained.

Q. (By Mr. Buckalew): What outstanding feature of the man in the brown suit is fixed in your mind?

A. No outstanding feature. In other words, I remember the whole face. I didn't remember just his nose or his eyes, or anything like that.

Q. You remember how he was dressed the last time you saw him?

A. As a matter of fact, I don't.

Q. You don't know whether he was dressed in fatigues or had a suit on? [234]

Mr. Plummer: I object to that on the grounds of its being immaterial. The date he last saw him wasn't given or anything else.

Mr. Buckalew: I know he doesn't know when he last saw him.

The Court: Objection sustained. Mr. Buckalew, the court feels you have gone quite far afield in try-

(Testimony of Forbes D. Baker.)

ing to test the veracity of this witness and his identity of recognition of these two defendants.

Q. (By Mr. Buckalew): Mr. Baker, do you recognize that man? (Pointing to man standing in the audience.)

A. No, I can't say that I do.

Q. That man wasn't with this man in a brown suit in Fairbanks?

A. Can't say that he was or that he was not.

Q. You don't recognize this fellow at all?

A. No, I don't.

Q. Now, I want to ask this question, your Honor, and I want to assure the court I have a good reason for asking it. Now I don't think he answered the question. At the time the F.B.I. showed you the picture, did they tell you the purpose for the investigation? Did they tell you the reason they wanted to identify these particular people?

Mr. Kirkland: Object to it's being immaterial and irrelevant. [235]

The Court: Objection overruled. He may answer.

A. As I recall, when Mr. Woresham showed me the picture, he asked me if I recognized these faces and I told him that I did recognize the faces; that I had seen them before; that I had seen them in connection with our flights at the field.

Q. Did you identify the people immediately?

A. As soon as I saw the pictures, yes.

Q. But you don't recall whether or not the F.B.I. told you that they were building a White Slave case?

(Testimony of Forbes D. Baker.)

Mr. Kirkland: Object to that because it's showing bias, your Honor.

The Court: Objection overruled. He may answer if he recalls.

A. As I recall, he—Mr. Woresham—did state something about that. I think what he said was they were trying to establish whether or not a certain person, and I assumed that these were the people, were in one place or another at a certain time.

Mr. Buckalew: Just one more question, your Honor. Then, I will be through.

Q. Now, it is your testimony that your best recollection is that you seen them in Fairbanks in the summer time?           A. That is right.

Q. And that you have never seen them together?

A. I could possibly have seen them together. I don't recall it. [236] It isn't outstanding in my mind that I did see them together.

The Court: Any cross, Mr. Dunn?

Mr. Dunn: Very little, your Honor.

Q. (By Mr. Dunn): Now, do you usually call this F.B.I. agent, Mr. Woresham?

Mr. Kirkland: Object to that as being completely irrelevant.

The Court: Objection sustained.

Mr. Dunn: What do you usually call the F.B.I. agent?

Mr. Kirkland: Excuse me. I believe the objection was sustained.

The Court: That is right, counselor.

Q. Is Mr. Woresham a friend of yours?

(Testimony of Forbes D. Baker.)

Mr. Kirkland: Object to that, your Honor.

The Court: Objection overruled.

A. I speak to him every time that I see him. He speaks to me when he sees me. We have nothing social.

Mr. Dunn: Thank you.

The Court: That is all. You may step down.

(Thereupon the witness was excused and left the witness stand.)

The Court: May this witness be excused to return to Fairbanks?

Mr. Kirkland: As far as the Government is concerned, he may be excused.

Mr. Buckalew: As far as the defendants. [237]

The Court: Very well. Thanks for coming, then, Mr. Baker. You may call your next witness.

Mr. Kirkland: May we approach the bench in regard to a copy of this.

The Court: You may. The court would like very much, if possible to have another witness tonight.

Mr. Plummer: This will just take a minute, your Honor.

The Court: Well—very well. Mr. Kirkland, I'd like to give this to you so you may give it to Mr. Baker (referring to manifest). Very well. Can we move along, please.

Mr. Plummer: Yes, your Honor. On this receipt No. 1813 which has previously been identified, we do have a copy prepared at this time, and I, at this time, offer it in evidence.



The Court: Very well. You may show it to counsel. Is there any objection?

Mr. Dunn: We repeat our objection, your Honor, we made to the original.

The Court: But not to—as to the copy itself?

Mr. Dunn: No. We stipulate copy may be substituted.

The Court: Very well. It may be admitted and marked Plaintiff's Exhibit No. 2.

Mr. Kirkland: If it please the court, I'd like to call Mr.—if he will—or may we be excused.

The Court: Off the record please.

(Thereupon an off-the-record discussion was had out of the [238] hearing of the reporter.)

Mr. Plummer: Your Honor, do I have leave of the court to return this receipt to the official records?

The Court: Mr. Buckalew—Mr. Dunn, any objection to him returning that to Mr. Briggs?

Mr. Buckalew: No, your Honor, no objection.

Mr. Dunn: No, your Honor.

The Court: Thanks for coming, Mr. Briggs and Mr. Baker. You may call your next witness.

Mr. Kirkland: If the court please, could I be allowed to put on two more witnesses this afternoon?

The Court: The court will see what we can do.

Mr. Kirkland: He is a local witness, but I want him first.

The Court: I think you better call your outside witness first.

Mr. Kirkland: Very well. Mr. Disney.

## CLARENCE DISNEY

called as a witness on behalf of the Government, and being first duly sworn, testifies as follows on:

## Direct Examination

By Mr. Kirkland:

Q. State your name, please?

A. Clarence Disney. [239]

Q. And your occupation?

A. Deputy U. S. Marshal, Kodiak.

Q. Mr. Disney, have you ever seen the defendant, Lena Mae Wilkins, before?      A. Yes, I have.

Q. And where did you see her, sir?

A. In Kodiak.

Q. Can you remember the month?

A. It was in the spring—in April I believe—I believe, April 28, on or about April 28, and on one other occasion I had occasion to see her.

Q. Did you call upon her in the early spring in April?

A. In April? In April, yes, I did interrogate Lena Mae Wilkins. I also know her as Mickey Wilkins.

Q. Yes. Now, what was the source or reason for your calling upon her?

A. Common knowledge in Kodiak she was——

Mr. Dunn: I object to that, your Honor. He can testify what he knows, but I don't think he can testify what was rumored about the town.

The Court: Unless the proper foundation is laid that is true.

Mr. Kirkland: If the court please, I believe we

(Testimony of Clarence Disney.)

have a special Territorial statute with regard it as evidence for maintaining a bawdy house. It's Section 65. [240]

Mr. Dunn: Your Honor, there's no such charge here.

The Court: What citation, please?

Mr. Kirkland: Just a moment, your Honor.

\* \* \* Section 65—9—14, your Honor.

The Court: Very well.

Mr. Dunn: Loan me your copy, please.

The Court: Of course, that is standard law on reputation. You haven't laid the proper foundation in respect thereto. If you lay the proper foundation, I think it is admissible.

Mr. Kirkland: Very well.

Q. (By Mr. Kirkland: As Deputy Marshal in Kodiak, were you acquainted with the general reputation of the defendant, Lena Mae Wilkins, in Kodiak, Alaska?

Mr. Dunn: Objection, your Honor. Her general reputation—her character is not a matter of issue in this trial at all.

The Court: Reputation is limited to reputation; however, it is a case of prostitution. I do think that the question of character does come into consideration other than normally admitted. Ordinarily it's a question of reputation. Very well, you—objection is overruled. You may inquire.

Q. You are acquainted with the defendant's general reputation in Kodiak?

(Testimony of Clarence Disney.)

A. Yes, from complaints received from an official capacity in [241]—as Deputy Marshal. I received complaints from City police, neighbors and others. Apparently there was something going on.

Mr. Buckalew: I'd like to object. He is not a qualified witness to testify as to general reputation in Kodiak. He is basing it on specific acts and he hasn't said anything about her general reputation in the town of Kodiak.

The Court: What you should do, Mr. Disney, is this——

Mr. Buckalew: Strictly hearsay, your Honor.

The Court: Reputation is nothing but hearsay, counselor.

Mr. Buckalew: I understand. General reputation is general hearsay, but he is basing it on specific acts; that he knows every police officer; if he knows what her general reputation is, if he talked to people and knows from his conversation with these people that she has the reputation of a prostitute. She is qualified to testify, but he's already stated from the stand. He's basing his testimony on specific complaints, not on any evidence brought to him as to her general reputation.

The Court: Are you through?

Mr. Buckalew: That is what takes it out of the hearsay—I guess I am through, your Honor.

Mr. Kirkland: I submit that what makes it hearsay——

The Court: Just a minute, counsel, just give the court a chance. Maybe I would be able to rule; to

(Testimony of Clarence Disney.)

say both counsel—but if you are going to talk continuously, which—the court is [242] endeavoring to break in, which is the right of court, then the court will have to abide by the assumed right of counsel to argue ad infinitum, if you—I caution both counsel, Mr. Buckalew particularly, that the court is endeavoring to rule in your favor, but you continue to talk and don't give the court a chance or opportunity to even rule in your favor, so I would caution you on that point, not to do that. Mr. Disney, the court would instruct you at this time on this particular subject, you should answer the questions only as are asked to you in yes or no fashion, not go on a story type of answer.

A. Yes, sir.

The Court: You may proceed.

Q. (By Mr. Kirkland): Are you acquainted with the defendant, Lena Mae Wilkins' general reputation in Kodiak, sir?

A. Yes, sir.

Q. And what is that reputation?

Mr. Buckalew: Objection.

The Court: Objection sustained.

Mr. Buckalew: He hasn't laid the proper foundation.

The Court: Objection sustained. It isn't proper. The court's sustained it. Counsel should get together. It's in your favor.

Mr. Kirkland: Very well.

Q. Mr. Disney, have you discussed the witness' general [243] reputation in Kodiak with other persons?

A. I have.



(Testimony of Clarence Disney.)

Q. And you are familiar with her general reputation in Kodiak? A. Yes, sir.

Q. Now, sir, what is the defendant's general reputation in Kodiak—the defendant, Lena Mae Wilkins?

Mr. Buckalew: Now, your Honor, before he answers, I don't think the proper foundation has been laid.

The Court: Objection sustained. Proper foundation has not been laid.

Mr. Kirkland: Your Honor, could I at least argue this reply before the court rules?

The Court: No, because it is obvious you are in error, counselor, not laying the proper foundation.

Mr. Kirkland: I take exception to his Honor's ruling in this type of case.

The Court: Listen, counsel, you haven't stated what his reputation for this, and another, you just ask what reputation is for what. It must be specific.

Mr. Kirkland: Your Honor, I am proceeding under the statutes which I cited to the court.

The Court: Court has ruled, counsel; I don't wish to argue with you.

Q. (By Mr. Kirkland): What was her—are you acquainted with the defendant's [244] reputation for morality and decency?

A. Yes.

Mr. Buckalew: Now, your Honor, I've got—I want to point out to counsel where I think principal objection lies. He hasn't elicited from this witness how long this particular woman was in Kodiak; how

(Testimony of Clarence Disney.)

many people he talked to; we've got to know how much observation and how long she lived there, or what length of time it took to build up this so-called reputation. I don't know; she might not have been there long enough to have any reputation in the town of Kodiak.

The Court: The court will sustain the one point only; that is, it has not been put down to a time certainty. Therefore, may the court advise you that you should ask this witness whether or not that he knew the defendant, Lena Mae Wilkins, on or about the 28th day of April, 1954.

Q. Did you know the defendant, Lena Mae Wilkins, during April of 1954, or May, or in the spring?

A. I stated before that I only met her twice—April 28 was one of those times, that I interrogated her.

Q. And then you did know her in April 28? Is that correct?      A. Yes.

Mr. Kirkland: Your Honor, may he answer the question now that I asked previously?

The Court: You may now ask the question.

Q. What was the defendant's general reputation for morality [245] and decency, sir?

Mr. Dunn: Objection, your Honor.

The Court: What is your objection?

Mr. Dunn: My objection is different than Mr. Buckalew's. Unless I am mistaken, the law on this matter—her reputation—evidence concerning reputation is admissible in order to attack the veracity

(Testimony of Clarence Disney.)

of a witness, and it is admissible only for that purpose, and even for that purpose, general reputation with respect to any specific trade cannot be shown by specific instances of misconduct. I think that is the law. Now, the defendants, neither of them, have been witnesses to date in this trial, and until such time as they have become witnesses, and hence their veracity is a matter for consideration of this court and this jury. I think every question concerning the reputation of both of these defendants is improper.

The Court: Objection sustained.

Mr. Kirkland: If the court please, could I be heard on the subject?

The Court: Yes, you may.

Mr. Kirkland: I am not proceeding under the theory of general reputation at all. I am proceeding under a Territorial statute which states as to evidence and the submission of the evidence and that type. That is the reason I am not laying the foundation.

The Court: I see. [246]

Mr. Kirkland: I am not going into the general character and reputation of the witness. I haven't been under that theory to begin with.

Mr. Dunn: Well, your Honor, I'd like to be heard when the court is ready.

The Court: Now, you are relying, counselor, upon 65—9—14?

Mr. Kirkland: That is right, your Honor. I con-

(Testimony of Clarence Disney.)

tend if you can prosecute them for the crime—if a person can be convicted for the crime on that type of evidence, certainly that type of evidence would be admissible to establish—I am going to establish the intent for a person being in that area.

The Court: That is true, counselor, but on the other hand, Mr. Dunn points out a very cogent point, that while a defendant's reputation is always at issue in the trial of a case, I do not think that that can be a fact until such time as it has become an issue.

Mr. Kirkland: I agree with his Honor. However, this is a statutory exception.

The Court: I'd like to hear you on that point, Mr. Dunn. I point out to you the section states, "That in all prosecutions for the crime defined in the section last preceding, common fame shall be competent evidence in support of the indictment." That being the case, then, that would mean the Government would have to bear the burden of [247] proof.

Mr. Dunn: Your Honor, it seems to me that Section 65—9—14 speaks for itself; in the first words of that section where it says, "That in all prosecution for crimes defined in the section last preceding," and the crimes defined in the sections last preceding are no parts of the indictment here. And hence, this particular statutory exception of which counsel seeks now to avail himself, cannot aid him. The crimes in the section last preceding are no part

(Testimony of Clarence Disney.)

of these proceedings, and hence they are immaterial in the proceedings.

The Court: Now, aren't you overlooking this fact——

Mr. Dunn: I hope not.

The Court: It is a crime of conspiracy for that purpose set forth in the section before. Therefore, it behooves the Government to prove that a house was kept for that purpose.

Mr. Dunn: Do I understand your Honor to say that the charge here is conspiracy to set up a house of ill-fame?

The Court: No, that isn't it. The court stated——

Mr. Dunn: That is, the only charge up here is to keeping or setting up a house of ill-fame. There is no conspiracy to either keep or set one up as charged.

The Court: What is your position in that respect, Mr. Kirkland?

Mr. Kirkland: Your Honor, my position in that respect is as follows: If that is competent evidence and a charge of that nature to send a person to the penitentiary, it should [248] logically follow that it should be competent evidence under our statutes as to the person's occupation in the village of Kodiak, wherein it is going to the proof of the indictment that they conspired that she would be transported with the intent to engage in prostitution and debauchery.

Mr. Dunn: Counselor can avail himself only of



(Testimony of Clarence Disney.)

what the legislature did do, not what he thinks the legislature should have done. If the legislature set up one exception, that only one counsel can use. He can't use one that he thinks logically follows from one the legislature did allow.

The Court: Excepting this, aren't you overlooking the fact that this particular section is an integral part of this indictment which counsel for the Government must prove?

Mr. Dunn: I am lost, your Honor. I don't see it's any part of the indictment.

The Court: Well, the court does; therefore, the objection will be overruled. You may answer.

Mr. Buckalew: Your Honor, I'd like to renew my objection.

The Court: You may renew the objection and likewise the same ruling. Overruled.

Mr. Buckalew: I haven't stated it.

The Court: Excepting, you renew it—what you have already stated.

Mr. Buckalew: I was going to enlarge it. [249]

The Court: Objection overruled. You have been heard once on it.

Q. (By Mr. Kirkland): Will you answer the question now, please, sir?

A. What was the exact question again?

Q. Well, sir, what was the defendant, Lena Mae Wilkins, reputation in Kodiak as to what type house she maintained?

Mr. Buckalew: I didn't get the question?

(Testimony of Clarence Disney.)

The Court: As to what type of house she maintained.

Mr. Dunn: I object to that, your Honor, because that is not a part of a person's character. If you rule that this statute is applicable at all, it is applicable for showing the common fame of the individual. I take it that is their over-all characteristics, not what kind of house she kept.

The Court: The court feels that you should rephrase your question, and as to the reputation of the defendant as to morality and decency.

Mr. Kirkland: Then, your Honor, the next question you will say—have to answer good or bad; that is not the answer I want.

The Court: Well—but then, we must abide by the rules. Now, the court instructed you to ask that question, Mr. Kirkland, as outlined by the court.

Q. What was the defendant, Lena Mae Wilkins, general reputation for morality and decency in Kodiak, Alaska, at that time? [250]

A. It did not comply with Territorial laws at that time.

Q. Thank you, sir. Did you go out to have a discussion with her?

A. Yes. From the information I did interrogate her about her work.

Q. Now, will you tell the court what took place at that discussion.

Mr. Buckalew: Your Honor, I am going to object to it on behalf of the defendant, Yokely, on the ground it's hearsay.

(Testimony of Clarence Disney.)

The Court: Objection overruled. You may answer. It's a question of conspiracy, Mr. Buckalew.

Mr. Buckalew: Sir?

The Court: It's a question of conspiracy; that is, the indictment. Therefore, as I pointed out this morning, in ruling of admissibility of that evidence, that that statement of one could conspire, or can bind the acts of another.

A. I did discuss with her the problem of her getting employment in Kodiak. At that time she stated she did not have any regular means of livelihood. I asked her if she intended to do so. She said, yes. And that in general was our conversation and my interrogation of her to find out where she was from, she said to me she was from Fairbanks. She had been in town a short time and a short time later, she left town.

Q. Did you go to see her again before she [251] left?

A. I think it was a week or ten days later, I went back to find out what work she did get in town, in the way of waitress work or housekeeping, and she stated that she hadn't found work yet and at that time my interrogation was ended and I left and two days later she left town.

Mr. Kirkland: Thank you, sir. No further questions.

The Court: You may cross-examine.

(Testimony of Clarence Disney.)

Cross-Examination

By Mr. Buckalew:

Q. Mr. Disney, is this a social call?

A. It was in response to these complaints—numerous complaints I had received about a certain area that was occupied by a Negro girl. I didn't know her name at the time.

Q. How long had she been in town?

A. I don't know that. I only got those complaints that day. I went out that evening to find out what it was all about; where this house was; who the person was; and all.

Q. Now, these complaints, how long a period of time elapsed from the time you got there?

A. I don't know. I don't know when they got to Kodiak.

Q. Was it a week?           A. I don't know. [252]

Q. You don't know how long she was in Kodiak?

A. No, except I do know April 28 I did interrogate and a week later I interrogated her again, and she left town after that.

Mr. Buckalew: Your Honor, I'm going to ask the court to strike all of this witness' testimony. He doesn't even know how long she was in Kodiak.

The Court: That certainly isn't grounds for objection.

Mr. Buckalew: As to his testimony as to her general reputation, it is one of the necessary elements.

(Testimony of Clarence Disney.)

The Court: That is right. What you may do, then, counsel, you may ask him whom he discussed it with and the dates and times that he did discuss it.

Q. When you interrogated——

Mr. Kirkland: If the court please, in order to save time with counsel, I will stipulate then that this portion—her reputation will be stricken, but as to her reputation only.

Mr. Dunn: Now, your Honor, I think that is just a magnanimous gesture, after he has drawn it out of the witness before the jury.

The Court: Objection overruled. You may inquire, Mr. Buckalew.

Q. Did this defendant ever mention Mr. Yokely to you?      A. No.

Q. Never heard the name, Yokely?

A. No, I never heard the name before. [253]

Q. How many complaints did you get on it?

A. The City patrolman on duty mentioned it to me and the one that works nights mentioned it to me. Apparently he had gathered this information the day before—a couple of days before and he presented it to me because it apparently was out of his jurisdiction, outside the City limits in the area of this place where she was living, which was not her home, she wasn't paying rent on it was where I got the other complaints, and apparently——

Q. How do you know she wasn't paying rent then?

A. I asked her. I asked her who was paying that



(Testimony of Clarence Disney.)

rent for the house in my first interrogation on April 28.

Q. Was she down there to see a boy friend of hers?

A. She didn't tell me that. She told me she was there to go to work.

Q. Whose house was she in?

A. I don't know. The Bank of Kodiak was renting the house.

Q. Were they renting the house to Lena Mae Wilkins?      A. No.

Q. Who were they renting it to?

A. I don't know.

Q. Who else was in the house?

A. Some other Negroes. I didn't know their names.

Q. Some other Negroes?

A. On two different occasions there were Negroes in the house, yes. [254]

Q. How long was Lena Mae in Kodiak, do you know?

A. No. I had no knowledge of how long she was in town except she was there April 28 and she left sometime in May—the 10, 11 or 12.

Q. Do you know whether or not she had a job on the Naval Air Station? Do you know whether she worked as a maid at the Naval Air Base?

A. I ordinarily would have known of that, but I didn't know she was working any place.

Q. Now, didn't she tell you she was visiting a certain individual in Kodiak?      A. No.

(Testimony of Clarence Disney.)

Q. She didn't tell you that? A. No.

Q. You called on her after you got the first complaints?

A. Well, not first complaints. I had received apparently about the same time several complaints.

Q. What kind of evidence did you have?

A. Excessive traffic to a house indicates that there is something wrong. This policeman talked with taxi drivers. They talked with bartenders that something is wrong and he reports that to me.

Q. Did you talk to anybody that had intercourse with this woman in Kodiak?

A. I certainly tried. I was unable to get any signed statement [255] from anybody that she collected money, so my interrogation of her.

Q. As far as you know, she might have entered into any unlawful activity?

A. Except for her common reputation.

Q. And that was passed on a couple of complaints you had?

A. More than a couple. Numerous complaints.

Q. What do you mean by numerous complaints. How many complaints?

A. At least eight to twelve.

Q. Were any of the complaints for drinking and loud noises?

A. No. At the time I talked with Lena Mae she was very sober.

Q. I am talking about the complaints. You got eight or ten complaints on it.

A. Yes. Too much traffic to the house.

(Testimony of Clarence Disney.)

Q. Is that a crime?

Mr. Kirkland: Your Honor, I object to any further questions along the line——

The Court: Objection sustained.

Mr. Buckalew: Your Honor——

The Court: Objection sustained, Mr. Buckalew. She's not being——

Q. With all of these complaints you didn't come up with any evidence you could prosecute her on?

A. Lot of verbal statements were given to me that I could not [256] use in court, that she was in Kodiak for the particular purpose of engaging in prostitution; that's the verbal complaint, but I couldn't get it in writing.

Q. Did you ask anybody in the City of Kodiak what her general reputation was?

A. No. They had come to me with that information.

Q. Now, answer the question. Did you ask anybody in the City of Kodiak what her general reputation was?

Mr. Kirkland: Objection, your Honor. The witness answered the question.

The Court: Objection sustained. The record will speak for itself, Mr. Buckalew. Are you through, Mr. Buckalew?

Mr. Buckalew: Yes, I am.

The Court: Mr. Dunn, you want to inquire? We want to finish up this witness tonight if we can, so he may go back to Kodiak.

Mr. Buckalew: Your Honor, it's 5 o'clock.

(Testimony of Clarence Disney.)

The Court: That is right. This gentleman has been over here for a long period of time. I feel we ought to exert ourselves to finish up tonight with this witness if possible.

Q. (By Mr. Dunn): Did you obtain, Marshal, as many as one formal complaint against the defendant, Wilkins?

The Court: What do you mean, counsel, by formal?

Mr. Dunn: That is, actual written [257] complaints.

A. A verbal complaint to me is as legal as anything else.

Q. Prosecute on a verbal complaint?

A. I will make a complete investigation on a verbal complaint, yes, sir.

Q. Was there ever a complaint filed in court concerning the defendant, Wilkins?

A. No. If I had the evidence, I would have signed the complaints.

Q. You didn't have any evidence?

A. No one would sign statements, no.

Q. If you had the evidence, you would have filed a complaint?

A. It would have been filed.

Q. And you didn't file a complaint?

A. No.

Q. You said an oral complaint would start you off on investigation just the same as any complaint, did you not?

A. That is right.

(Testimony of Clarence Disney.)

Q. And you investigated these oral complaints thoroughly?

A. To the best of my ability, yes.

Q. And you had eight to twelve complaints?

A. Yes.

Q. And to your knowledge—your own personal knowledge, the defendant, Wilkins, was only in Kodiak a week to ten days?

The Court: No, that is not the testimony, counselor.

Mr. Dunn: What is your testimony? [258]

The Court: Well, the record speaks for itself, Mr. Dunn. He stated that he interrogated the witness on or about the 28th day of April. He doesn't know when she arrived and that she left on or about the 10th or 12th of May.

Q. (By Mr. Dunn): Is that correct?

A. That is right.

Q. Left about the 10th or 12th of May?

A. That is right.

Q. The first time you knew she was there was April 28?      A. That is right.

Q. You have very many Negroes in Kodiak?

A. Yes. I suppose we have the same percentage as other communities.

Q. Well, now, when you said that you knew the general reputation of Lena Mae Wilkins, did you mean that you knew that eight to twelve people had complained about her. Is that what you meant?

A. To my knowledge, yes.

Mr. Dunn: I have no further questions, your



(Testimony of Clarence Disney.)

Honor, but I move to strike the witness' testimony concerning the reputation of the defendant, Lena Mae Wilkins, in cross-examination as elicited, that not only does the witness not know her general reputation, but could not have known the general reputation during the time that he knew she was in Kodiak and due to the fact that, [259] of the complaints from a very few people that he received, he wasn't able to get any evidence against her.

The Court: Motion denied. Any redirect?

Mr. Kirkland: No redirect, your Honor.

The Court: May this witness be excused?

Mr. Kirkland: As far as the Government is concerned, he may.

Q. (By Mr. Buckalew): Mr. Disney, the first time you interviewed——

The Court: Just a moment, please. I point out to you that Mr. Kirkland sponsored this witness. Didn't you cross-examine him?

Mr. Buckalew: Sort of, yes, sir.

The Court: And Mr. Dunn just got through cross-examining. There has been no redirect; therefore, you haven't any right to recross without leave of the court.

Mr. Buckalew: I ask his Honor, then, to give me permission to ask one more question and call it further cross-examination. I just have one more question I want to ask the witness.

The Court: Very well. You may do so.

Q. (By Mr. Buckalew): Now, the first time you

(Testimony of Clarence Disney.)

interviewed her, Mr. Disney, didn't you ask her how long she had been in Kodiak ?

A. I believe she told me she had been in Kodiak a couple of [260] weeks, but I didn't know that. She told me that—two or three weeks.

Mr. Buckalew: That is all.

The Court: Very well. You may be excused, then. Thanks for coming, Mr. Disney.

(Thereupon the witness was excused and retired from the witness stand.)

Mr. Kirkland: Might I call one more witness ?

The Court: No. I think this is ample. There is a limit to what the court personnel can take, and they are not paid for overtime. I'd like to get this through just as much as you would, counsel, but there is a limit to what the court can do. The court will—this trial will be continued until tomorrow at the hour of 10:00 a.m., and again I must instruct you Ladies and Gentlemen of the Jury not to discuss this case among yourselves or permit others to discuss it with you. The court will remain in recess for five minutes. Recessed at 5:06 o'clock p.m.

(Whereupon, at 5:11 o'clock p.m., court reconvenes, following a 5-minute recess, the jury having resumed their places in the jury box, and the following proceedings were had:)

The Court: Did you have anything to bring to the court, Mr. Buckalew?

Mr. Buckalew: No, sir.

The Court: The court will stand adjourned until [261] tommorrow morning at 10:00 o'clock a.m.

(Whereupon, at 5:12 o'clock p.m., the court continues the cause to 10:00 o'clock a.m., December 23, 1954.) [262]

December 23, 1954

The Court: You may call the roll of the jury.

The Clerk: Trial jury is all present, your Honor.

The Court: Ladies and gentlemen of the jury, the court was phoned this morning by Mr. Buckalew who advised the court that he is physically incapacitated to proceed with the trial today. I have a statement from his doctor to that effect, therefore, out of fairness to the defendant the court will have to continue this trial and it will be continued until next Monday morning at the hour of 11:00 a.m., as the court has another matter set down at 10:00 o'clock. May I at this time wish you a Merry Christmas and the court will remain in session for other business. You may now be excused.

(Thereupon, at 10:05 o'clock a.m., this case was continued to Monday, December 27, 1954, at 11:00 o'clock a.m.) [264]

December 27, 1954

The Court: You may call the roll of the jury.

The Clerk: Trial jury is all present, your Honor.

Mr. Dunn: Well, the doctor's statement, your Honor, speaks of another day's rest, I think, and that day would be today, so unless his diagnosis is incorrect she should be ready in the morning.

The Court: Mr. Kirkland, could you advise the court as to how long this Bop hearing will consume tomorrow?

Mr. Kirkland: It is my understanding Mr. Cooper is not going to oppose it. Is that correct, sir?

Mr. Cooper: Well, yes, that is the representation I previously made to the court, but apparently they insisted on a hearing so I have no idea what they anticipate doing here, your Honor.

Mr. Buckalew: Your Honor, could we approach the bench?

The Court: You may.

(Whereupon, all counsel approached the bench and the following proceedings were out of the hearing of the jury:)

Mr. Buckalew: Your Honor, Mr. Dunn and I think Mr. Kirkland ought to send a doctor down, representing the Government, to examine Lena Mae Wilkins. This puts Mr. Dunn and I in a very embarrassing position. I suspect that perhaps our co-defendant might have gotten the idea of illness from the fact that [268] a continuance was granted by the court on the ground that I was unable to appear. I think to protect the court and to protect Mr. Dunn and myself that the Government should send a physician down to examine her.

Mr. Dunn: I would concur in that, your Honor,

because it would remove from me any possible suggestion that I am representing that this defendant is ill. I am not underwriting her illness or I am not making any representations at all concerning it.

The Court: I don't doubt your position, Mr. Dunn. What position do you take, Mr. Plummer?

Mr. Plummer: Well, we have no objection to having an examination made. We would not do it—I mean, if the court orders it and pays for the examination out of Fund “C.”

The Court: Well, the court feels since Dr. Jackson, who is a friend of Mr. Dunn and is a reputable physician, made this statement that he wouldn't have made it unless it substantially bore out the facts.

Mr. Dunn: Well, the statement strikes me, your Honor, as not being a particularly strong statement. I think everything in the statement is true because I don't think Russ Jackson would have signed his name to it if it wasn't true, but it doesn't say very much.

Mr. Kirkland: Of course, the problem is, probably, Mr. Dunn, the person could feign those symptoms and a doctor [269] couldn't actually tell.

The Court: What position do you take then?

Mr. Kirkland: I don't know whether we would accomplish anything. We couldn't go to trial any earlier anyway by the time the doctor got down to examine her.

Mr. Buckalew: It would be protection for the following day. I am afraid before the trial gets to



conclusion I think these symptoms will be more prominent. If I was in her position and I had those symptoms I think it would be more aggravated the closer we got to the conclusion of the trial.

The Court: Well, in that respect we don't want to expend any more money than we have—than is necessary—and if you don't insist on it, I will not.

Mr. Dunn: May I make this suggestion, your Honor. That it may be costing the Government more money to have these jurors tied up day after day than it would to have her examined and make sure she is in court. So far as the expense of the thing is concerned the court can deduct it from my \$150.00—if that will solve the problem.

The Court: Well, we couldn't do that.

Mr. Buckalew: I will split it with you.

The Court: What position do you take?

Mr. Kirkland: Could we at least call Dr. O'Malley and see if he could go down and find out whether a person can feign those symptoms? [270]

The Court: Well, as you pointed out, it is obvious they could. I think any lay mind would know that, so you accomplish nothing by that.

Mr. Kirkland: I feel as though we should have something because I don't want this matter delayed. I am sure the court doesn't either and neither does counsel.

Mr. Plummer: If one of the jurors get sick we will really be in trouble.

The Court: That is right. That what is worry-

ing me no end. I feel you ought to take a firm stand as representing the Government.

Mr. Plummer: Let's request the court to have a medical examination of the defendant.

The Court: This is what I had hoped you would do, after all, you represent the Government.

Mr. Buckalew: We won't object to it.

The Court: Well, then, do you now?

Mr. Kirkland: Yes, sir.

Mr. Plummer: We do so suggest and request.

The Court: Very well. A minute order may be entered authorizing a doctor to be employed by the District Attorney's office to have a physical examination made and under the circumstances I wonder if we shouldn't continue this until Wednesday and we will get that Bop matter over with.

Mr. Plummer: Before we do that let's have some more [271] conversation with Mr. Cooper. He doesn't object to the revocation of the license and all we objected to was their withdrawing the petition.

The Court: Let's assume this fact though, that it will take all day tomorrow. Don't you think under the circumstances we better continue this until Wednesday morning?

Mr. Plummer: I think if we talk with Mr. Cooper and if he is willing to submit to the revocation without the withdrawal we will have nothing to do on B.O.P.

The Court: But you must apprise him of the fact there is likely to be criminal action to be taken upon the application.

Mr. Plummer: We have already filed and he represents the people on the criminal action.

The Court: Let's assume it will take all day tomorrow——

Mr. Plummer: We will only have to put on a prima facie case and we would have 3 witnesses.

The Court: That being the case then we possibly should continue this until 2:00 p.m. tomorrow.

Mr. Plummer: I think that is probably true.

The Court: Very well. Thank you.

(Whereupon, counsel resumed their respective tables and the following proceedings were had in the presence of the jury.)

The Court: The record will speak for itself reference the consultation of counsel at the bench. [272]

(Whereupon, after discussion regarding the B.O.P. case the following proceedings were had.)

The Court: Upon stipulation of counsel the hearing which was set down for tomorrow at 10:00 a.m. can be very briefly taken care of, therefore, this trial will be continued to tomorrow morning at 10:00 a.m. Again I must instruct you not to discuss this case among yourselves nor permit others to discuss it with you. You may now be excused to report tomorrow morning at the hour of 10:00 a.m.

(Thereupon, at 11:40 o'clock a.m. this case was continued to Tuesday, December 28, 1954, at 10:00 o'clock a.m.) [273]

December 28, 1954.

The Court: Is counsel for the Government ready to proceed in the case of United States of America vs. Yokely and Wilkins?

Mr. Kirkland: Government is ready, Your Honor.

The Court: Is counsel for the defendants, Mr. Dunn and Mr. Buckalew, ready to proceed?

Mr. Dunn: Ready, Your Honor.

Mr. Buckalew: Ready, Your Honor.

The Court: Very well. You may call the roll of the jury.

The Clerk: Trial jury is all present, Your Honor.

The Court: Very well. The Government may call its next witness.

Mr. Kirkland: I would like to call captain Marten.

**DOYNE K. MARTIN**

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

**Direct Examination**

By Mr. Kirkland:

Q. State your name, please?

A. Doyne K. Marten.

Q. And your occupation, sir?

A. Soldier. [275]

Q. And your present assignment?

A. I am station Commander, Alaska Communications System, here in Anchorage.

(Testimony of Doyne K. Martin.)

Q. And, Captain, you were subpoenaed to appear in court and received a subpoena duces tecum, is that correct?      A. Yes, sir.

Q. Do you have a certain telegram dated June 1, 1954, to Mrs. Lena Mae Wilkins at 1806 East "I" Street, Anchorage, Alaska, from one James Yokely in Portland, Oregon?

A. I have a telegram here to a Mrs. Lena Wilkins. It is signed Yakely, Y-a-k—Possibly could have been a typographical error, I don't know.

Q. And do you have a telegram dated on or about May 13, 1954, from James Yokely to Bill Jordon at Kodiak, Alaska, or a telegraphic money order that is in the amount of \$45.00?

A. Yes, sir, I have a T.M.O. dated 11 May to be paid to William Jordon at Kodiak, Alaska, from James Yokely.

The Court: Counselor, do you offer them in evidence?

Mr. Kirkland: Yes, sir, Your Honor, I offer them in evidence.

The Court: Is there any objection, Mr. Dunn or Mr. Buckalew?

Mr. Dunn: Your Honor, I repeat an objection previously made concerning the best evidence rule. These things being copies and also the fact that the discrepancies as they appear in those [276] telegrams—or copies of telegrams are such that I seriously doubt if proper foundation has been laid to make them admissible against these 2 defendants. I think it would be the burden of the



(Testimony of Doyne K. Martin.)

prosecution to tie these telegrams to these people rather than simply show a similarity in names.

The Court: What is your position, Mr. Kirkland?

Mr. Kirkland: Your Honor, we are offering that in support of the statement of the defendant Lena Mae Wilkins which has been offered in evidence. In other words, corroboration and feel it should go to the jury and the jury should consider it for what it is worth.

The Court: May the court see the telegrams as to the names particularly. (The Documents were handed to the court.) The objection will be overruled and they may be admitted. Now the Captain advises the court since they are permanent records of the Alaska Communication System he asks leave of the court to have them removed. I am wondering, in light of that fact, if counsel wouldn't stipulate at this time that the captain may have exemplified copies made and have them substituted in lieu hereof.

Mr. Dunn: No objection.

Mr. Buckalew: No objection.

Mr. Kirkland: No objection.

The Court: They may be admitted with that understanding. Please do not mark them at this time. Does counsel want to read them? [277]

Mr. Kirkland: Yes, Your Honor, I will as soon as they are marked.

The Court: And, Captain. I am wondering if you could probably, during the lunch hour, bring

(Testimony of Doyné K. Martin.)

in a copy of them.           A. Yes, sir.

The Court: Very well. You may read them to the jury. Now, let's get them down for the proper identification. Which one do you have as Exhibit No. 4?

The Clerk: He said he wanted them admitted as one. I haven't marked them at all yet.

The Court: Then will you give me the date on the yellow one, please?

Mr. Kirkland: The date, Your Honor, is——

The Court: Let the Captain read it.

A. The one from Portland was received here in Anchorage—it is stamped 1:33 in the morning.

The Court: What is the date?

A. The 2nd of June.

The Court: 1954?           A. Yes, sir.

The Court: And the T.M.O., can you advise the court as to that date?

A. The T.M.O. is dated—it was filed at the counter at 11:50 p.m. on the 11th of May, 1954.

The Court: Did you say 1:50, Captain? [278]

A. 11:50 on the 11th of May, that is the T.M.O. The telegram from Portland was sent from Portland on the 1st of June and was received here at 1:33 in the morning on the 2nd of June.

The Court: That T.M.O. was from Yokely to Jordon?

A. The T.M.O. was from James Yokely to William Jordon and the wire was to Mrs. Lena Mae Wilkins from Yakely.

Mr. Kirkland: Ladies and gentlemen of the

(Testimony of Doyne K. Martin.)

jury, I have a T.M.O. and telegram here which has been offered into evidence. The telegram number is 006. Underneath that is KUA 195 UKPC DE UWKC 180Z 24 Nightletter Paid, Portland Org Jun 1. It is addressed to Mrs. Lena Mae Wilkins at 1806 East I St Anchorage. The telegram reads as follows: "Things worked O.K. Margie went to Fairbanks. Received Letter and Phone Message Tell Kirby to Wire Money at Once Will Be There Soon Love Yakely." And then it has identification numbers underneath it. The second telegram—or T.M.O. has the identification symbols on it and reads as follows:

"Pay to: William Jordon

Address: Care ACS

City: Kodiak

Amount: \$Forty-Five and no/100.....45.00

From: James Yokely"

Q. (By Mr. Kirkland): Captain, do you have with you a certain telegram dated on or about May 13, 1954, or a T.M.O., that is?

A. The T.M.O., yes. [279]

Q. \$50.00 to James Yokely, Portland, Oregon, from William Yokely at Anchorage, Alaska?

A. Yes, sir.

Q. And do you also have a telegram dated June 2, 1954, in the amount of \$50.00 to James Yokely, Portland, Oregon, from William Yokely at Anchorage, Alaska?

(Testimony of Doyne K. Martin.)

A. I have one dated June 2, in the amount of \$100.00.

Q. June 2, in the amount of \$100.00?

A. Yes, sir, from William Yokely to James Yokely.

Q. And, Captain, do you have with you a telegram dated on or about June 3, 1954, in the amount of \$150.00 to James Yokely of Portland, Oregon, from one Alvin Placide, Anchorage, Alaska?

A. Yes, sir.

Mr. Kirkland: I am going to offer these into evidence.

The Court: Show them to counsel.

Mr. Dunn: Same objection to them, Your Honor.

The Court: Very well. Same ruling of the court. They may be admitted and marked Plaintiff's Exhibits 5 and 6 or do you want them all together?

Mr. Kirkland: Just have them marked as one, Your Honor, as No. 5.

Mr. Dunn: Point of information, please. The 2 telegrams previously admitted, did the court designate those as 4 and 5?

The Court: No. 4. [280]

Mr. Dunn: 4 alone?

The Court: Yes, at the request of the District Attorney. Now he indicated he would like to have these 3 go in as one, therefore, they may be admitted as Plaintiff's Exhibit No. 5. Do you want to read them at this time, counselor?

Mr. Kirkland: I don't wish to, but I guess I

(Testimony of Doyne K. Martin.)

had better. Ladies and gentlemen of the jury, Government's Exhibit No. 5 reads as follows: T.M.O.—Telegraphic Money Order——

“Seattle

Serial Four Five 45

Pay James Yokely Anderson Hotel Interstate  
Ave Portland Org

Rpt James Yokely

One Hundred Dollars 100

FM William Yokely Caution

Dodd”

The next one reads:

“Seattle

Serial Four Seven Six 476

Pay James Yokely Anderson Hotel Interstate  
Ave Portland Org

Rpt James Yokely

Fifty Dollars 50

FM William Yokely Caution

McClain”

And the next one is:

“Serial Six Eight 68 [281]

Pay James Yokely Anderson Hotel Portland  
Org

Rpt James Yokely

One Hundred Fifty Dollars 150

FM Alvin Placide Caution

McClain”



(Testimony of Doyne K. Martin.)

Q. (By Mr. Kirkland): Captain, do you know whether or not the parties who actually signed these sent those telegrams?

A. I have to assume that they did.

Q. You have no personal knowledge?

A. No, I don't. It is more or less like sending a registered letter. In other words, you assume it got there unless you hear, for example, if they came in and said they had reason to believe they didn't send it then we would go through and check it.

Mr. Kirkland: No further questions.

The Court: You may cross-examine.

\* \* \*

### Cross-Examination

By Mr. Buckalew:

Q. Captain, I want you to look at that application for money order and tell me whether or not you can tell from the application who was on duty the night that application was [282] filled in?

A. I have 3. You mean——

Q. The one that I showed you there.

A. Yes, that would be Mrs. Mikelson.

Q. That application shows who sent the money?

A. Yes, sir.

Q. Who sent——

A. This is the application the party made when he sent the wire, or made application to send the wire.

Q. Who was the applicant?

A. Mr. William Yokely.

(Testimony of Doyne K. Martin.)

Q. Now, Captain, can you tell me whether or not it would be possible for a woman to come in and make application and sign a man's name without some sort of notation being made on the application?

A. It would be very unlikely. Normally, on these T.M.O.s, for example, if a lady came in and signed a man's name then the counter clerk at that time would say that you would have to sign it then by so and so. In other words, there would have to be 2 names on the telegram.

Q. Do you know whether or not that is the general office practice in the A.C.S. office?

A. Yes, sir, it is.

Q. Will you find the other wire application?

A. I have 3. [283]

Q. Do you have another one signed William Yokely? A. Yes, sir, I do.

Q. Is it countersigned by Lena Mae Wilkins?

A. No, sir.

Q. How is that application signed?

A. It is signed William Yokely.

Q. And who was the girl on duty when that application was taken? A. Mrs. Mikelson.

Q. That is the same lady that was on the desk on the other one? A. Yes.

Q. Was her name at that time something else?

A. Yes, it was Thelma Conklin.

Q. Does her name appear on the application?

(Testimony of Doyne K. Martin.)

A. No, just her check up in the upper left-hand corner—T.C. which indicates it is Thelma.

Q. If she signed one now it would be T.M. instead of T.C.?

A. I think she still uses her T.C. It is just a matter of identifying who took the order.

Q. Will you examine this other application for a money order and who made that application?

The Court: I wonder, counselor, if you wouldn't identify it so——

A. This is the one from Alvin Placide to James Yokely, Anderson Hotel, Portland, Oregon, for \$150.00 and it is dated June 3. [284]

Q. Now, Captain, does the same rule apply to this wire that is applied to the other applications?

A. It is the general rule on all telegraphic money orders. By the way, you asked me the question—this was always taken by Mrs. Mikelson.

Q. Now, if Lena Mae Wilkins had sent that money she would have had to sign "By Lena Mae Wilkins"? A. That is right.

Mr. Buckalew: Thank you, Captain.

The Court: Mr. Dunn, do you have any cross?

\* \* \*

### Cross-Examination

By Mr. Dunn:

Q. I am speaking now of Plaintiff's Exhibit No. 4, Captain, which consists of 2 Telegrams, and one of which reads as follows: "Pay William Jordon

(Testimony of Doyne K. Martin.)

care ACS Kodiak Alaska Rpt—repeat I suppose it is—William Jordon forty-Five Dollars 45.” Do you know who William Jordon is?

A. No, sir, I have no idea.

Q. Do you know whether or not he got this money?

A. I assume that he did.

Q. Would it have been likely? [285]

A. Yes, very likely.

Q. Would it have been likely that a female person would have received that money?

A. No, sir.

Q. That again is in keeping with the policy of your office?

A. That is right, we require identification.

Q. Well, do you require the same identification with respect to the sending and receiving of telegrams as distinguished from telegraphic money orders?

A. No, sir, not the same as we do with telegraphic money orders.

Q. The policy of the office is to be less strict where money is not involved?

A. That is true. That is general, however, we generally are sure that the recipient of the telegram is the party to whom it is addressed to.

Q. Didn't I understand you to testify earlier that the policy of your office was to assume that the addressee receives the telegram and that the sender sends it unless something unusual is brought to your attention?

A. That is right.

Q. Now, I call your particular attention to this

(Testimony of Doyme K. Martin.)

telegram addressed to Mrs. Lena Mae Wilkins and signed Yakely. Is it your testimony that your office assumes that a person by the name of Lena Mae Wilkins received this telegram and further that your office assumes that a person by the name [286] of Yakely sent it?

A. Well, first of all we assume Yakely did send it because it is signed by him. That is a carbon copy which shows it was processed through our communications center, and as to positively saying she did or did not receive it, I believe we could possibly check our delivery sheets. If there is an address on it, it may have been delivered.

Q. But at the present time all you can do is assume, is that right?      A. That is right.

Q. Answer this question, if you will, Captain. Do you assume that Yakely and not Yokely sent this telegram?

A. I am not assuming that at all. I mean, I don't know. I have no idea. All I know from my assumption is that a man named Yakely sent that telegram. That is the way he signed it.

Q. Therefore, it would be Yakely and not Yokely, is what your assumption would be?

A. That is the signature on the T.M.O.—Yakely.

Mr. Dunn: Thank you, Captain. No further questions.

The Court: Any redirect?

Mr. Kirkland: No redirect.

The Court: Thank you, Captain. You may be excused.



(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Kirkland: Call Mr. Gilbert R. Buckles. [287]

GILBERT R. BUCKLES

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Kirkland:

Q. Will you state your name, please?

A. Gilbert R. Buckles.

Q. Your occupation, sir?

A. I am Station Manager of Pacific Northern Airlines.

Q. And you were subpoenaed to appear here to-day and received a subpoena duces tecum? In other words, ordering you to produce certain documents? A. Yes, sir.

Q. Mr. Buckles, do you have with you your records pertaining to ticket No. 272-32269 dated April 15, 1954, issued to Mickey Wilkins on a flight from Anchorage to Kodiak, Alaska?

A. Yes, sir, I do.

Q. May I see that, please?

Mr. Kirkland: I offer this in evidence.

Mr. Dunn: Does counsel intend to offer all these instruments or only this one?

A. That is the complete record for that flight. We don't tear that apart.

(Testimony of Gilbert R. Buckles.)

Mr. Dunn: Your Honor, the name Wilkins appears on only 2 of these instruments and I object to all the others on the [288] ground they are irrelevant. I don't see, as a matter of fact, even why counsel wants them offered.

The Court: The witness has testified that that is the complete document. They don't like to tear them apart.

Mr. Dunn: I didn't hear the latter part of his testimony. I think, Your Honor, probably you are going to ask for copies to be made. I assume he wants to keep these.

A. I could leave those here during the trial.

Mr. Dunn: I, therefore object to copies being made and offered of anything other than the last 2 pages on the ground of relevancy and with respect to the last 2 pages again the best evidence rule, Your Honor.

The Court: Very well. In that respect the objection will be overruled. It may be admitted and the witness will have the right to withdraw these upon his supplying, at some subsequent date, copies of those 2 sheets only.

A. May I say something here?

The Court: Yes.

A. The one sheet there is for flight 16 going to Kodiak. The last sheet is for flight 11 coming back from Kodiak. That is why there are 2 separate lists there.

The Court: I see.

(Testimony of Gilbert R. Buckles.)

Mr. Kirkland: I didn't lay the foundation. I didn't realize the second one was for a flight back from Kodiak. Could I ask him further questions? [289]

Mr. Dunn: Your Honor, you noticed that I made no objection to the foundation being laid which I knew counsel could lay.

The Court: May I inquire, Mr. Buckles, whether or not you could let those sheets remain with the court? A. Yes, sir.

The Court: Do you have other copies?

A. We have them in our accounting office.

The Court: Therefore, these could remain with the court's file in this case? A. Yes, sir.

The Court: That being the case, counsel, it would appear the purpose could be served by letting the entire document go in if you haven't any objection to it. I would suggest to you, Mr. Kirkland, you only read that portion that is germane to the issues. I am sure Mr. Dunn and Mr. Buckalew will stipulate that only that portion may be read.

Mr. Dunn: Subject to our objection.

The Court: Yes, that is correct. Very well.

Mr. Kirkland: Before I read this, Your Honor, I would like to ask 2 questions.

Q. (By Mr. Kirkland): Now, do you have records on a flight for ticket No. 311-75810 issued in the name of Lena Mae Wilkins on or about May 12, 1954, to travel from Kodiak to Anchorage? [290]

A. Yes, sir, we have here listed on our manifest, flight 11, of May 12. from Kodiak to Anchorage.

(Testimony of Gilbert R. Buckles.)

The Court: Could you, counselor, please give me that number again?

Mr. Kirkland: 311-75810.

The Court: Thank you. That will be marked then Plaintiff's Exhibit No. 6, and it may be read at this time.

Mr. Kirkland: Ladies and gentlemen of the jury, the last page here reflects the name "Wilkins, Mickie;" "1" for the number of pieces of baggage; total weight was 40 pounds and—frankly, I don't know how to read this too well—well, it says, "Departure time 8:45 a.m. Flight No. 16 on April 15, 1954." The second page is for Flight No. 11 on May 12, 1954; departure time, 5:40 p.m.; plane No. 465; ticket No. 311-75810; the name Lena Mac Wilkins; designation, Anchorage; number of pieces of baggage is 1; and weight is 40 pounds.

Mr. Kirkland: Your witness.

The Court: You may cross-examine.

Mr. Dunn: No questions, Your Honor.

Mr. Buckalew: No questions, Your Honor.

The Court: Thank you. You may step down.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Kirkland: Your Honor, I am looking for Mr. Fell, a representative from the airlines. He was under subpoena. [291]

The Court: From what company?

Mr. Kirkland: Alaska Airlines. He has been in

court all along, but I haven't seen him this morning. It is about recess time then possibly I can call another person.

The Court: Very well. Court will stand in recess for 10 minutes.

(Whereupon, at 11:10 o'clock a.m., following a 10-minute recess, court reconvenes and the following proceedings were had:)

The Court: Mr. Kirkland.

Mr. Kirkland: If the court please, I will call Deputy Marshal Johnson now. The witness, Mr. Fell, has been present in court every day up until today and we have requested the Marshal go to his home. He doesn't have a phone there and he has 3 days off.

The Court: I see.

Mr. Kirkland: Now, counsel might possibly stipulate—he will only be introducing the records—I have the records myself down in the office and counsel might stipulate that they go in without calling the witness and saying he was employed by Alaska Airlines and so on.

Mr. Dunn: We want to examine them, of course, Your Honor.

The Court: Very well.

Mr. Buckalew: We will probably stipulate to it, Your [292] Honor, but we will have to look at the records.

The Court: Very well. Maybe Mr. Plummer can go down and get them and while they are in the process of that this witness may be sworn.



## OLAF JOHNSON

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

## Direct Examination

By Mr. Kirkland:

Q. State your name, please?

A. Olaf Johnson.

Q. Your occupation?

A. Deputy United States Marshal.

Q. And how long have you been a deputy United States Marshal in Anchorage, Mr. Johnson?

A. 2 years.

Q. Mr. Johnson, do you know where the defendant Lena Mae Wilkins resided during the month of March this year, 1954?

A. She resided with Marvin Clark.

Q. And do you know where she was residing during the month of April, 1954?

A. 1806 East "I," Yokely's house.

Mr. Kirkland: Your witness.

Mr. Buckalew: No questions. [293]

Mr. Dunn: No questions.

The Court: Very well. That is all. You may step down.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call you next witness.

Mr. Kirkland: Mr. Plummer has gone down to get the next witness and that will be the close of the Government's case.

The Court: Very well. I wonder if, Mr. Buckalew and Mr. Dunn, you would mind consulting with the District Attorney concerning the admissibility of this evidence.

(Thereupon, counsel had a discussion out of hearing of the jury and the reporter.)

Mr. Dunn: Your Honor, we have no objection to this being admitted by virtue of the fact the witness to identify the same is absent, but I do repeat my best evidence objection.

The Court: Very well. There being then no more objection than that the objection will be overruled and it may be admitted and marked Government's Exhibit No. 7. How many sheets does that comprise, Mr. Kirkland?

Mr. Kirkland: Your Honor, there is only one sheet we are interested in. This appears to be the whole booklet. Possibly we can put a marker in and put the booklet in in its entirety and tape the other parts down, if counsel desires.

The Court: Very well. What date is on that, counselor?

Mr. Kirkland: This is the manifest for April 11, 1954.

The Court: Where is it from? [294]

Mr. Kirkland: This is from Anchorage to Fairbanks; ticket No. 11616; the passenger name being James Yokely.

The Court: Thank you.

Mr. Kirkland: The Government rests, Your

Honor. I think this is sufficient, my reading to the court will suffice to the jury.

The Court: Very well. That being the case then the defendant may call their first witness.

Mr. Buckalew: Your Honor, I would like to argue a motion at this time.

The Court: Very well. Ladies and gentlemen of

The jury, you may be excused to retire to the jury room while counsel argues a motion to the court.

(Whereupon, the jury was excused and left the courtroom and the following proceedings were had.)

Mr. Buckalew: Your Honor, on behalf of the defendant James Taylor Yokely, I would like at this time to move that the indictment be dismissed for the reason that the Government's case is built around an out-of-court statement by co-defendant Lena Mae Wilkins. Now, His Honor knows that any of the contents of an out-of-court statement are inadmissible against the defendant Yokely. His Honor will give the jury, I am sure, an instruction to disregard the statement. In other words, the statement is admissible against Lena Mae Wilkins, but is not competent evidence against James Taylor Yokely. That is all the Government presented. There [295] is no other evidence outside of that statement that shows any conspiracy on the part of James Taylor Yokely at all. There is one thing that I should point out to His Honor, and I think His Honor should consider it when he considers the motion, if His Honor will examine the statement

very quickly you will see that in the statement the co-defendant states that she sent certain sums of money through A.C.S. and that she signed the name, James Kirby Yokely. Now, His Honor heard the Government's own witness, Captain Marten, testify that it was a practice down there that if a woman sent money and signed a man's name it would have to have a counter signature. Now, that is just one of the things that I want to point out to His Honor.

I don't think that there is any evidence at all against James Taylor Yokely, and when you consider the out-of-court statement is not competent evidence against James Taylor Yokely the Government has got nothing. There is nothing to go to the jury.

The Court: Are you through?

Mr. Buckalew: Yes, I am.

The Court: Motion denied.

Mr. Dunn: If the court please, I thought Mr. Buckalew was going to make that on behalf of both defendants, although he didn't tell me. I just misunderstood. I would like to make the same motion on behalf of the defendant Lena Mae Wilkins and I base my motion on this: It seems to me, and this, of course, will be the substance of my argument to the jury, that the government [296] has proved practically everything, although it hasn't yet been rebutted, except that these people did in fact conspire. The Government has proved that they moved around from place to place. The Government has proved that they knew each other and that the defendant Wilkins had rented a room in the house with the

defendant Yokely, and the Government has proved that James Taylor Yokely has received money from a number of sources. The Government has not proved that there was any conspiracy or any plan which took place between these 2 individuals prior to that movement or prior to the sending of the money. The Government has to prove 2 things: That the individuals did conspire together and thereafter committed one or more overt acts to effect the object of the conspiracy. Now, they have proved, subject to rebuttal, of course, a number of acts, but I don't see where they have offered any evidence that these 2 people did in fact conspire together, and Your Honor might—well, the court has ruled on that point. I will rest with what I have said, Your Honor.

The Court: Very well. I call your attention to *Corpus Juris Secundum*, Volume 15, at page 994 under the heading of "Conspiracy" and also call your attention to Section 92, at page 1145, concerning the question of overt acts. The point you make, Mr. Dunn, that "Although in the absence of statutory changes it is not necessary for the purpose of rendering a person criminally liable to prove that any overt acts were done in pursuance of the conspiracy, the common-law offense being complete when the [297] combination was formed and the agreement entered into; such acts may, nevertheless, be shown since from them an inference may be drawn as to the existence and object of the conspiracy." Based upon the law your motion is denied. You may recall the jury.



(Whereupon, the bailiff recalls the jury, the jury returns to the courtroom and the following proceedings were had.)

The Court: Let the record show that all the jurors are back and present in the box. You may call your first witness.

Mr. Buckalew: Call William Yokely.

The Court: Before proceeding I would like the record to show that the court referred to the subject "conspiracy" as a whole when I referred to the law and on Mr. Dunn's point specifically. That one point I think you understood it to be such.

Mr. Dunn: Yes, Your Honor.

The Court: Mr. Yokely may come forward and be sworn.

### WILLIAM KIRBY YOKELY

called as a witness for and on behalf of the defendants, and being first duly sworn, testifies as follows on

#### Direct Examination

By Mr. Buckalew:

Q. Will you state your name, please, sir?

A. William Kirby Yokely.

Q. Mr. Yokely, sometime during the latter part of May, 1954, did [298] you wire some money to your brother, James Taylor Yokely, in Portland, Oregon?

A. I did.

Q. Did you send 2 wires?                      A. I did

Q. What were the amounts of those?

A. One was \$50.00 and one was was \$100.00.

(Testimony of William Kirby Yokely.)

Q. Now, was Lena Mae Wilkins living in the house?      A. At the time she was.

Q. Does your brother have a rooming house down there?      A. Yes.

Q. Lena Mae was living there?      A. Yes.

Q. Did Lena Mae advise you to send the money?

A. No, she didn't.

Q. Whose money did you send down there?

A. My money.

Q. Do you know whether or not Lena Mae Wilkins ever gave James Taylor Yokely any money?

A. Not to my knowledge.

Mr. Buckalew: Your witness.

The Court: You may cross-examine. [299]

### Cross-Examination

By Mr. Kirkland:

Q. What is your occupation, Mr. Yokely?

A. I didn't understand.

Q. What is your occupation?

A. Bartender and hod carrier.

Q. Are you presently employed, sir?

A. Well, the year round—in the summer time I am a hod carrier and in the winter time I am a bartender.

Q. Have you ever been convicted of a crime?

A. No, I haven't.

Q. Have not?      A. No.

Q. Misdemeanor or felony?

(Testimony of William Kirby Yokely.)

A. Misdemeanor.

Q. Have you ever been convicted of a crime includes a misdemeanor as well as a felony.

A. Yes.

Q. You have?

Mr. Dunn: I object again as I previously have. Unless I am sadly mistaken, Your Honor, the proper question is "Have you ever been convicted of a felony," not of a crime. The 2 are different.

The Court: I am afraid counsel is in error in that respect. Objection overruled. [300]

Q. And you are the brother of the defendant James Taylor Yokely? A. I am.

Q. What crime have you been convicted of, sir?

A. It was juvenile delinquency.

Q. Anything other than that? A. No.

Q. How old are you, sir? A. 27.

Q. And you live at the house with your brother?

A. I do.

Q. How much rent was he charging Lena Mae Wilkins for the room?

A. I think the rent was \$20.00 a week.

Q. And did you work this summer as a hod carrier? A. Yes.

Q. How much time did you put in, sir?

A. Oh, practically the whole summer.

Mr. Buckalew: I don't think this is relevant. I mean, it is just taking up the court's time. That is the only reason I am objecting.

The Court: Well, objection overruled. This is cross-examination.

(Testimony of William Kirby Yokely.)

Q. Did you work steady this summer as a hod carrier?      A. Yes, I did.

Q. And where do you tend bar, sir?

A. I tend bar at the H & M Barbecue and Texas Playhouse. [301]

Q. Do you tend bar down at the H & M now?

A. No, I have a bar myself.

Q. You have a bar?

A. It is a partnership.

Q. And is Mr. Dungee employed by you?

A. No, he isn't.

Q. Was he employed by you?

A. No, he wasn't.

Mr. Kirkland: No further questions.

The Court: Any redirect?

### Redirect Examination

By Mr. Dunn:

Q. Mr. Yokely, do you recall the circumstances under which the defendant Wilkins rented a room at the home of the defendant Yokely?

A. Yes.

Q. Who rented her that room?

A. I did.

Q. You did that yourself?      A. Yes.

Q. Did your brother have anything to do with it at all?

A. He wasn't there at present. [302]

Q. He wasn't even at the house?      A. No.

Q. Was he in town,

A. I presume he was.

(Testimony of William Kirby Yokely.)

Q. Now, the District Attorney asked you about previous trouble you had in connection with felonies and misdemeanors. How long has it been since you have been in any trouble?

A. That was in 1942, I believe.

Q. You haven't been in any trouble then for about 12 years?

A. That is right.

Mr. Dunn: No further questions.

Mr. Kirkland: I have one or 2 further questions.

The Court: Very well.

Recross-Examination

By Mr. Kirkland:

Q. Mr. Yokely, when you say you rented the room to Lena Mae——

A. I did.

Q. ——did you inquire of her what her occupation was?

A. No.

Q. Do you know whether or not she was employed?

A. No.

Q. Did she have visitors in her room? [303]

A. Well, I mean, I wouldn't know. I worked at night. I wouldn't be there from about 7:00 o'clock until maybe 6:00 or 8:00 o'clock in the morning.

Q. Is that house a bawdy house?

A. No.

Q. Has anyone ever been arrested in that house charged with maintaining a bawdy house?

Mr. Dunn: Objection, your Honor. It couldn't possibly be a proper question. It is going again to my objection of being convicted of a crime. Counsel has some leeway and he is just broadening it.

The Court: In that respect the court was read-



(Testimony of William Kirby Yokely.)

ing a note from the secretary. Would you please read the question back?

(Thereupon, the reporter read the question  
Line 6 above.)

Mr. Dunn: Let him ask the witness whether or not this witness has ever been arrested there. He can do that, I suppose, under the court's ruling, although I think it is an improper question, too.

Mr. Kirkland: I am not trying to attack this witness' integrity. Counsel brought out how he rented the room, etc., and I then wanted to go into detail surrounding the renting of this room. I then asked this witness if that house was a bawdy house and his answer was, no. I then asked him if anyone had been arrested out of that house and charged with maintaining a bawdy house at that particular address. [304]

The Court: Objection overruled. You may answer.

Mr. Buckalew: Your Honor, could I make an objection?

The Court: You may.

Mr. Buckalew: I object to the question on this ground that he hasn't established any time certain and he asked, "has that house ever been a bawdy house." Well, we ought to know how long the house belonged to James Taylor Yokely; how long he has been there. It is possible when the house was first built it belonged to somebody else and might have been a bawdy house. I don't know.

(Testimony of William Kirby Yokely.)

The Court: I agree with you in that respect, counselor, but isn't that the prerogative of re-redirect examination?

Q. (By Mr. Kirkland): Did Mary White live at that address, Mr. Yokely, in January of this year? A. Mary White?

Mr. Dunn: Objection, your Honor. It is irrelevant.

The Court: Well, did you answer the other question as to whether or not——

Mr. Kirkland: No, I don't believe he did.

The Court: That is correct, so let's keep the record straight.

Mr. Buckalew: Your Honor, I would like to say one more thing. If it was a bawdy house I think we can take judicial notice of the court's files and see whether or not the place has been abated or any action has been taken against it by the United States [305] Attorney's office.

The Court: I do feel, Mr. Kirkland, that Mr. Buckalew has a point. You ought to confine that to a time so they would know and not have to consume the time of the court and the jury on re-redirect to establish that fact.

Mr. Kirkland: Very well.

Q. (By Mr. Kirkland): Will you answer my first question, during the year 1954 has anyone ever been arrested out of that house or in that house for maintaining a bawdy house there?

A. Not to my knowledge.

Q. Did Mary White live there?

(Testimony of William Kirby Yokely.)

A. Mary White?

Mr. Dunn: Objection, your Honor. It is irrelevant.

The Court: I think it is just testing him. Objection overruled.

A. Not to my knowledge. I don't know.

Q. Well, did she work out of the house then?

A. No one worked out of the house.

Q. Well, to be more specific, on January 15, 1954, was she arrested by Deputy United States Marshal Olaf Johnson charged with maintaining a bawdy house?

Mr. Buckalew: Your Honor, he stated he didn't know. He answered the question.

A. Not to my knowledge. [306]

The Court: All right, he has again answered the question and says not to his knowledge, therefore, the ruling of the court would be useless because the witness has already answered.

Mr. Kirkland: No further cross.

The Court: Any re-redirect, counselor?

Mr. Dunn: No question, your Honor.

The Court: Very well. You may step down.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Dunn: I would like to call Mr. Burge, your Honor.

The Court: Mr. Burge, may come forward. Let the record show this is the same Mr. Burge who

testified in the presence of the court and not in the present of the jury and before doing so he was sworn under oath, therefore, does not have to be sworn again.

RICHARD W. BURGE

called as a witness for and on behalf of the defendants and having previously been duly sworn, testifies as follow on:

Direct Examination

By Mr. Dunn:

Q. Will you state your name, please?

A. Richard W. Burge.

Q. Mr. Burge, do you know the defendant Lena Mae Wilkins? [307]

A. I do.

Q. How long have you known her?

A. Between a year and a half and 2 years, approximately 2 years.

Q. Now, did you have occasion to see the defendant Lena Mae Wilkins on the morning that James Taylor Yokely was arrested and eventually brought into this court in this action?

A. Yes, I saw her the morning that—I don't know what time it was—it was somewhere around noon, I think. He was brought in in the afternoon.

Q. Well, tell the court and the jury, if you will, what you observed concerning the behavior of Lena Mae Wilkins when you saw her? How she acted?

A. Well, I was going down the corridor to the Commissioner's office——

Q. Is that the Federal Building?

(Testimony of Richard W. Burge.)

A. Federal building. This building, and just as I reached the second door of the United States Attorney's office, Officer Pass stepped out and I stopped and spoke to him and he spoke. Then Lena Mae came out and, I think, Mr. Fitzgerald and F.B.I. Agent Sachen. I think the 4 of them were all there. As Lena Mae came out she said, "Hello, Mr. Burge," and I said, "Hello, Mickie."

Q. You say you have known this defendant about a year and a half or 2 years?

A. I have, yes. [308]

Q. Does she usually call you Mr. Burge or does she usually call you Richard?

A. She usually calls me Richard.

Mr. Kirkland: Objection. Immaterial.

The Court: Objection overruled.

Q. Now, is there any particular time at which she calls you Mr. Burge rather than Richard?

A. It is generally when I run across her around the bars and she is drinking. She gets—I don't know, kind of polite or formal. I can generally tell when she is drinking or kind of upset by her formal actions towards me, a lot of respect or something.

Q. Is it your testimony, Mr. Burge, that the defendant Lena Mae Wilkins calls you Mr. Burge when she is drinking and calls you Richard when she is sober?

A. She does, yes.

Q. Will you continue your testimony, please.

A. I continued down the corridor to the Commissioner's office and I go in. I met Mr. Buckalew



(Testimony of Richard W. Burge.)

in there and he asked me if I was in trouble. I told him, no, that I was down to see about a bond. He asked me if I knew this girl over there and I said, "Yes, I know her," so he said, "Well, I think it is one of my clients," and I said, "I am down here to see about a bond." At that time I saw the Commissioner come from behind a desk. He went over to the east end of the [309] building near the windows. There is a table there near those books—index books, precinct books—and I didn't hear all he was saying, but I did hear him ask Lena Mae if she knew what was in——

Mr. Kirkland: I object to this, your Honor, as being hearsay. I suggest counsel ask questions. I have no opportunity to object when the witness narrates.

The Court: Objection sustained. Counselor, I think you should instruct the witness not to testify in narrative form, but to answer your questions.

Mr. Dunn: As the court wishes. I was simply trying to give him leeway to speed it up.

The Court: I realize that, but counsel objected and the court has no other choice than to rule on the objection.

Q. (By Mr. Dunn): Mr. Burge, did you walk behind the defendant Wilkins to the Commissioner's office?      A. I did.

Q. How did she walk, steady, or how?

A. She walked kind of pert. It wasn't her normal gait.

Q. She walked abnormally?      A. Yes.

(Testimony of Richard W. Burge.)

Q. Did she stagger?

A. No, I didn't notice her staggering.

Q. Well, after you saw her in the Commissioner's office did you [310] see her any place else that day?

A. About 30 minutes later, yes.

Q. Where did you see her then?

A. At East Chester Flats at Yokely's house.

Q. How was she acting at that time?

A. Very profane, abusive and vulgar.

Q. Well, were you so situated in front of Yokely's house that you could observe the defendant Wilkins closely?

A. Yes, I was very near.

Q. Was she drunk or sober?

A. Well, I don't even know whether she had been drinking, but she was acting abnormal. Just a personal opinion, I figured she was drunk or she was under the influence of something.

Q. You don't know whether it was whiskey or something else?      A. No, I don't.

Q. But she did appear drunk?

A. She appeared drunk, yes, under the influence of something.

Q. Did you have any conversation with Mr. Sachen of the F.B.I. concerning the arrest of Yokely sometime after the arrest took place?

A. I did.

Mr. Kirkland: Object to it as being immaterial.

The Court: Objection overruled.

Q. Please tell the court what that conversation was?      A. Well—— [311]

(Testimony of Richard W. Burge.)

The Court: I think counsel should state the time, place and who was present.

Q. State the time and place the best you can?

The Court: And also who was present.

A. Well, I was alone when I met him just inside the door of the Post Office in this building.

Q. Was this subsequent to the arrest of Yokely?

A. Well——

Q. Was this after Yokely was arrested?

A. It was. Yokely was in jail at the time.

Q. About how long after Yokely was arrested?

A. About a week, I think.

Mr. Kirkland: Object again on the ground it is immaterial. It happened after the arrest.

Mr. Dunn: I think the court knows the materiality of it.

The Court: The court feels that—the conversation took place between one of the Government's witnesses and this witness, therefore, it is admissible. As to the value to be placed upon it, that is a question of fact for the jury to determine. Objection will be overruled.

A. I met him just inside the door coming into the Post Office. I spoke to him and he spoke to me and he said, "You know, I should have put a bullet in your friend's head," and I said, "Who is that?" and he said, "Jim Yokely," and I said, [312] "Well, it was aggravated assault," and he said, "But we don't protect criminals," and I said to him, "I know the Bureau was an investigating body, but there was also a City officer there and I do know it

(Testimony of Richard W. Burge.)

is his duty to prevent crimes as well as apprehend criminals," and he said, "Well, you boys are going to know a lot about me when I get through investigating down there," and I said, "Well, I wouldn't because as far as you are concerned I am a law-abiding citizen."

Mr. Kirkland: Now, your Honor, I object to any such testimony as that on the grounds it is immaterial and irrelevant.

The Court: Objection overruled. The amount of value the jurors want to place on that particular type of testimony is entirely up to them and it is admissible under the law as the court understands it, therefore, the objection will be overruled.

Q. Did you actually see Mr. Sachen arrest the defendant Yokely?

A. Well, Mr. Sachen—I will put it this way if you don't mind—Mr. Sachen and I were standing just outside the door when Officer Pass came out of the house with Yokely and Yokely was trying to get them to carry Lena Mae away and Mr. Sachen told him to come on and get in the car and Lena Mae walked past me and was cussing him and talking to him about what he couldn't do or something and he turned around and hit her and she fell back towards me. I stepped out of the way and Sachen grabbed Yokely from the rear and pushed him on towards the car and put him inside the car. [313]

Q. Did he have any trouble getting him into the car?

A. No, after he caught him from the rear he

(Testimony of Richard W. Burge.)

turned him on around to the car and got on in the car and sat down.

Q. Did Mr. Sachen reach for his gun?

A. No, he didn't.

Mr. Dunn: No further questions.

The Court: You may cross-examine.

**Cross-Examination**

By Mr. Kirkland:

Q. Mr. Burge, what did you say you were in the Commissioner's Court for?

A. To see about a bond.

Q. See about a bond? A. Yes.

Q. For who? Yokely or yourself?

A. It was about my bond.

Q. Your bond? A. Yes.

Q. Have you ever been convicted of a crime, Mr. Burge? A. I have, misdemeanor.

Mr. Dunn: Same objection, your Honor.

The Court: Objection overruled. [314]

Q. What crime? A. Mostly gambling.

Q. Any other crimes?

A. Selling whiskey without a license.

Q. Are you a good friend of the defendant Yokely? A. I am a friend of his, yes.

Q. Now, how did you happen to go out to Yokely's house?

A. Well, I went to the H & M and when I looked there were several standing outside and I said,



(Testimony of Richard W. Burge.)

“They are arresting somebody over at Yokely’s,” so I walked across over there. My car was parked in front of the H & M. Mr. Sachen was standing just outside the door and I asked him who was he arresting at Yokely’s.

Q. Now, don’t go too far. I——

A. I went over there to see about someone being arrested. I was going to see about securing a bondsman or making a bond myself.

Q. Has Yokely ever testified in your behalf in any cases?

A. He testified at the Grand Jury, but I don’t know how he testified.

Q. Have you and Yokely been co-defendants in several matters—not several matters—in 2 or more criminal charges?

A. Well, I don’t think 2. I think we were arrested once for gambling together at the V.F.W. Club. Other than that I don’t think I have ever been arrested with Yokely. [315]

Q. Were you a co-defendant with Yokely on charges of neglecting to assist a police officer?

Mr. Dunn: Your Honor, I object to all of this. I think it is improper cross.

Mr. Kirkland: It goes to show friendship.

The Court: Objection overruled. Counsel has a right to show the interest, if any, that the witness may have to any of the defendants, therefore objection is overruled.

A. We were arrested, yes. Yes, we were arrested

(Testimony of Richard W. Burge.)

for failing to aid and assist a Territorial Officer.

I think that was the charge.

Mr. Kirkland: No further cross.

The Court: Any redirect, Mr. Buckalew? Mr. Dunn?

Mr. Dunn: No, Your Honor.

Redirect Examination

By Mr. Buckalew:

Q. Mr. Burge, that last complaint Mr. Kirkland inquired about hasn't that been dismissed?

A. Well, I put up a bond and you handled it for me. You said it was dismissed for lack of merit or something similiar to that.

Mr. Kirkland: What was the question again?

The Court: You may read it back. [316]

(Thereupon, the reporter read the question on line 20, page 316.)

Mr. Kirkland: Mr. Burge, where did you get the idea that the complaint had been dismissed?

A. From my attorney.

Mr. Kirkland: Mr. Buckalew?

A. That is right.

Mr. Kirkland: And now when you say the "last complaint" you mean the last one what? The last complaint you remembered?

A. Failing to aid and assist a Territorial Officer.

Mr. Kirkland: No further questions.

(Testimony of Richard W. Burge.)

Mr. Dunn: No questions, Your Honor.

Mr. Buckalew: No further questions.

The Court: That is all. You may step down.

(Thereupon, the witness was excused and left the stand.)

The Court: It is lunch time and that being the case the court feels this is an opportune time to continue the case, therefore, this case will be continued until 2:00 p.m. The court must instruct you not to discuss this case among yourselves nor permit others to discuss it with you. You may now be excused until 2:00 p.m.

(Whereupon at 12:00 o'clock noon, the court continues the cause to 2:00 p.m. of the same day.) [317]

(At 2:00 o'clock p.m., counsel for plaintiff being present and counsel for the defendants being present, the trial of said cause was resumed.)

The Court: You may call the roll of the jury.

The Clerk: Trial jury is all present, your Honor.

The Court: Very well. You may call your next witness then, Mr. Buckalew or Mr. Dunn.

Mr. Dunn: Call Gilbert LaCour, Your Honor.

GILBERT LaCOUR

called as a witness for and on behalf of the defendants, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Dunn:

Q. Will you state your name, please?

A. Gilbert LaCour.

Q. Do you know the defendant Lena Mae Wilkins?           A. I do.

Q. Did you know her at the time James Yokely was arrested, the arrest being the matter that eventually brought him into court on the present charge?

A. Well, did I know her personally?

Q. Yes.           A. I knew her. [318]

Q. Where are you employed, Mr. LaCour?

A. At the present?

Q. Yes.           A. Alaskan Salvage.

Q. Now, at the time of Mr. Yokely's arrest were were you employed?

A. Veteran Cab Company.

Q. Did you drive a cab for that company?

A. Yes, I did.

Q. Now, did you have occasion to see Lena Mae Wilkins on the morning preceding James Yokely's arrest?

A. I saw her that night and early that morning.

Q. How long have you known the defendant Wilkins?

A. Well, I don't know exactly how long I have known her. I have seen her off and on for about 6 months prior to that.

(Testimony of Gilbert LaCour.)

Q. About how many times do you think you have seen her before the evening or morning in question?      A. About a dozen times.

Q. About a dozen times. Had you seen her when she was both drunk and sober?      A. Yes, I had.

Q. Tell the court what you observed with respect to the defendant Wilkins on this particular morning; how you came to see her and what took place?

A. They called a cab out to the Texas Playhouse that morning. [319] I was dispatched out and she was the one that called a cab. I picked her up and took her to the Flats where she lived. She asked me to wait and she was going to move. She went into the house and started to pick up her clothes and things like that and bring them out to the cab and all the time she kept acting drunk, her tongue was wobbling and she couldn't walk very straight and while in the cab, when I picked her up at the Texas Playhouse, she kept repeating things over to me. Well, I didn't pay any attention exactly to what she was saying. After I let her out she picked up her clothes and brought them to the cab and she went back into the house and then came back out and started taking her clothes out again. She was taking them back into the house and I asked her if she wanted me to help take the clothes in. She had about one load so I picked up a load and took them in the house. I asked her where to put them and she said, "Drop them on the floor," so I layed the clothes on the floor and went back out to



(Testimony of Gilbert LaCour.)

the cab to wait for her. She came out to the cab and said she didn't have enough money to pay the bill so she went back into the house and got the money. She came back out and paid me and said, "That is all I have."

Q. Did she have enough to pay you?

A. She had enough to pay me.

Q. How much did she give you? [320]

Mr. Kirkland: Object. Immaterial.

The Court: What is the relevancy?

Mr. Dunn: It is preliminary, Your Honor. I am going to tie this to another thing subsequently.

The Court: Objection overruled then.

A. Well, the bill was \$4.00 the first time.

Q. And she paid you the \$4.00?

A. She paid the \$4.00. She gave me 4 \$1.00 bills.

Q. Did she give you any tip?

A. Not at that time.

Q. Did she make any comment concerning the tip? A. She didn't make any comment at all.

Q. Now, when you were driving her from the Texas Playhouse to the Flats, you said she was mumbling, did you?

A. She kept saying something incoherent. I couldn't understand what she was saying.

Q. Was she talking to you or to herself?

A. She would talk to me awhile then talk at random to herself more or less.

Q. Approximately what time was that?

A. Approximately 2.00 o'clock that morning.

Q. About 2:00 o'clock in the morning?

(Testimony of Gilbert LaCour.)

A. That is right.

Q. Now, at that time was the defendant Wilkins drunk or sober?

A. She was definitely drunk at that time. [321]

Q. She was definitely drunk at that time?

A. That is right.

Q. Did you see her later on that same night, more exactly the same morning?

A. I did see her again that morning.

Q. And where did you see her and what were the circumstances surrounding that occasion?

A. Well, I picked her up again that morning at the 1042 and she and the band that played at the 1042 got in my cab and wanted to go to the Texas Playhouse.

Q. These places you have mentioned, the Texas Playhouse and the 1042 Club, are those bars?

A. Those are bars—well, you would call them a bar and nightclub.

Q. But they do sell liquor?

A. They sell liquor.

Q. All right. So you picked her up at the 1042 Club?

A. I picked her up at the 1042 Club and the band and took them out to the Texas Playhouse. When they got out there, that is when she was acting pretty jolly with the band and everything and when they got out there she gave me a \$10.00 bill. I told her the fare was only \$2.00 and she said, "Keep the change."

(Testimony of Gilbert LaCour.)

Q. She gave you an \$8.00 tip?

A. \$8.00 tip.

Q. Was she drunk at this time? [322]

A. She was drunk at that time, too.

Q. In your opinion was the defendant Wilkins responsible for her actions at that time?

A. Well, in my opinion she wasn't responsible for anything.

Q. She was pretty drunk?

A. She was pretty drunk.

Mr. Dunn: No further questions, Your Honor.

The Court: You may cross-examine.

### Cross-Examination

By Mr. Kirkland:

Q. Now, Mr. LaCour, you testified that you picked the defendant Lena Mae Wilkins up at the Texas Playhouse? A. The first time.

Q. Then took her to her house, is that right?

A. That is right.

Q. Then from there did you testify you took her to the 1042 Club?

A. I did not take her to the 1042 Club.

Q. Did you later pick her up there?

A. Later.

Q. And you took her back to the Texas playhouse? A. That is right.

Q. And you got an \$8.00 tip, is that correct? [323]

A. That is right.

(Testimony of Gilbert LaCour.)

Q. Beg your pardon? A. That is right.

Q. Did you perform any unusual services for the \$8.00 tip?

A. Other than driving a cab from the 1042 Club to the Texas Playhouse.

Q. And is it your testimony that she wasn't responsible?

A. She wasn't responsible for what she did.

Q. And yet you kept the \$8.00 tip. Is that correct? A. I reminded her of it. I says——

Q. Now, did you keep the \$8.00 tip?

A. I did keep the \$8.00 tip.

Q. And you didn't perform any unusual services for her?

A. No, sir. Other than driving her from where she wanted to go to——

Q. Does she call you most of the time to haul her around when you were driving a cab?

A. No, she didn't.

Q. And you just happened to pick her up these three different occasions on this same date?

A. That is right.

Q. Have you ever been convicted of a crime?

A. No, I have never been convicted of a crime.

Q. That includes misdemeanor as well as felony?

A. Right. [324]

Q. Was the defendant soliciting out of your cab? A. No, she did not.

Q. Was not? A. She was not.

Q. An \$8.00 tip was for no unusual services?

Mr. Dunn: Your Honor, now the witness has

(Testimony of Gilbert LaCour.)

answered that and it's rather obvious what the prosecution——

The Court: Do you object?

Mr. Dunn: Yes, sir. Your Honor, I'd like to spell it out because I think it's rather obvious that what the prosecution is trying to do is to infer the direct opposite of what the witness has testified to, and I object on the ground the question has been answered repeatedly.

The Court: On the last ground the court will sustain your objection.

Mr. Kirkland: No further questions.

The Court: Is there any redirect?

Mr. Dunn: None, your Honor.

The Court: That is all. You may step down. Thanks for coming.

(Thereupon, the witness was excused and left the witness stand.)

The Court: You may call your next witness.

Mr. Dunn: Is Alfred Dungee in the courtroom, please?

(No answer.) [325]



Mr. Buckalew: Call James Taylor Yokely.

The Court: Mr. Yokely may take the witness stand.

JAMES TAYLOR YOKELY

called as a witness for and on behalf of the defendants, being one of the defendants, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Buckalew:

Q. State your name, sir.

A. James Taylor Yokely.

Q. You are one of the defendants in this action?

A. I am.

Q. I just want you to relax, Mr. Yokely, and will you tell the jury in your own words how Lena Mae came to the house and what your association was with Lena Mae Wilkins?

Mr. Kirkland: Your Honor, I must object to the request of narrative form.

The Court: Mr. Buckalew, it is highly improper that the witness testify in narrative form. He should be asked questions and should testify from the questions that are submitted to him.

Mr. Buckalew: I didn't know it was highly improper, Your Honor.

Mr. Kirkland: Well, Your Honor——

The Court: Then it is improper. Maybe the court erred [326] by saying highly improper, but it is improper. The court feels that as well as being established over generations the way a witness tes-

(Testimony of James Taylor Yokely.)

tifies is not narration, but in response to questions by counsel.

Mr. Buckalew: All right, your Honor.

Q. Mr. Yokely, do you remember about what date Lena Mae Wilkins came to your house?

A. Well, I imagine it was some place in May, April—in April, I guess it was. First of April sometime along in that neighborhood. I don't remember the exact date.

Q. Now, is it true that you have a rooming house? A. Yes, I have a rooming house.

Q. Now, how many rooms are in the house?

A. Well, right now it has 4 bedrooms, living room and kitchen. I did have 5, but I did some remodeling and cut one of the rooms out and enlarged my living room.

Q. How many tenants did you have in the house when Lena Mae came to live there? A. 3.

Q. Do you remember the names of those people?

A. My brother had one, William Yokely; me and my wife had one and Lena Mae had one.

Q. Now, when Lena Mae came to the house was your wife outside? A. Yes.

Q. How long did Lena Mae stay in the house? [327]

A. How long did she stay there?

Q. Yes.

A. Well, when she first came—my brother rented the room to her and I imagine she stayed there about 4 or 5 days, then she left and went to Fairbanks.

(Testimony of James Taylor Yokely.)

Q. Now, Mr. Yokely, did you send Lena Mae Wilkins to Fairbanks?

A. No, I never sent Lena Mae Wilkins any place.

Q. Did you ever get any money out of Lena Mae other than for rent?           A. No.

Q. What kind of person is Lena Mae Wilkins?

A. What kind of person is she?

Q. Yes.

A. Well, when Lena Mae is sober she is an awful nice girl. She is intelligent and everything else when she is sober, but when she is drinking nobody can do anything with her or tell her anything. She is loud and she uses vulgar language and everything else.

Q. Now, just prior to September 7, that is, I believe, the date that the statement was given to the F.B.I., did Lena Mae Wilkins ever talk to you about your going back with your wife or your wife coming back to live there?

A. Well, yes, she did. I will put it this way, when Lena Mae first came to the house there was nobody there but me, my brother and Lena Mae. He was by himself and I was by myself [328] at the time. My wife was in the States. We were separated. And Lena Mae and—I have got a T.V.—I have got a nice comfortable house, you know, and I have a T.V. there and at night sometimes when I came in we would just sit and watch the T.V. and we may have got a little close together, you know, just by being with each other, and I may have given her the wrong impression a little bit maybe. I have

(Testimony of James Taylor Yokely.)

got to admit that she respected me and she thought quite a bit of me and it just went too far. That is all. I didn't think it would go that far.

Q. Now, Mr. Yokely, is it true that Lena Mae Wilkins got pretty sweet on you?

A. I have to admit to that. I believe she did.

Q. What was Lena Mae's reaction when you advised her that you and your wife were going back together?

A. Naturally she didn't like it. I got a phone call from my wife down in Portland and I told her that I was going down there to see her and thought maybe that she and I would reconsider and go back together.

Q. Now, Mr. Yokely, did you have a conversation with Lena Mae Wilkins in your house approximately a week or 2 two weeks prior to September 7?

A. September 7. Is this the time——

Q. That is the time the statement was given?

A. Yes. [329]

Q. Was Lena Mae Wilkins intoxicated on that occasion?

A. Yes, she was—numerous times.

Q. Will you tell the jury what Lena Mae—what the conversation was about?

The Court: Counselor, I think you should establish the time, place and who was present.

Mr. Buckalew: I am trying to as best I can.

The Court: I wish you would ask then there wouldn't be any problem about it.

Q. Who all was present in the house?

A. Who all was present?

(Testimony of James Taylor Yokely.)

Q. Yes.           A. Just she and I.

Q. Now——

The Court: What time of day was it?

A. In the evening.

Q. And can you fix the date? How close can you fix the date, Mr. Yokely?

A. Well, I imagine, it was, say about the 24th of August.

Q. All right. Now, what was the nature of the conversation between you and Lena Mae?

A. Well, at first it came up about her. She kept coming in the house drunk and raising, what I would say, a whole lot of sand and using bad language and everything and I told her if she continued it that I was going to have to ask her to move. She [330] was behind on the rent at that time anyhow, so then she tells me, "You can't put me out," so I said, "Well, if you take that attitude I am going to put you out. I said—you are behind in your rent and I have asked you to quit using all that language in here and everything and coming in drunk like that." So then she brought out a threat that she had been talking to some F.B.I. men and I said, "Well, I don't care who you have been talking to. I said—what could you tell them," Then she spoke up and said, "Well, who do you think they are going to believe, me or you," and I said, "It is your business. You can do whatever you want to." And she brought up about she had been—I knew it for a fact that numerous



(Testimony of James Taylor Yokely.)

of times I had seen her in and out of bars and sitting up at the bar with some F.B.I man called Pete Wetzel. In fact, that is who I thought she had in mind when she was talking about that and when this Sachen came down I thought he was Pete Wetzel she was always talking about.

Q. Do you know how Lena Mae was fixed financially when she came to live at your house?

A. She had a little money.

Q. Do you have any idea how much money she had?

A. Well, I am going by what my brother said. He said she had around \$200.00 or \$300.00. How he would know that is when she paid the rent he said she went in——

Mr. Kirkland: I object to that, Your Honor. It is hearsay. [331]

The Court: Objection sustained.

Q. Did Lena Mae Wilkins give you \$8,000.00 in those 2 months she stayed there?

A. Lena Mae Wilkins hasn't given me \$8.00 much less \$8,000.00.

Q. Did you know Lena Mae was going to Fairbanks?  
A. She told me she was.

Q. Mr. Yokely, did you have any control at all over Lena Mae Wilkins?

A. None whatsoever. I only tried to demand my rent out of her when rent day was.

Q. If you told her to go to Fairbanks and hustle do you think she would have gone? Could you have sent her up there if you had wanted to?

(Testimony of James Taylor Yokely.)

A. I don't think so. Lena Mae has got a mind of her own.

Q. Do you know whether she worked out of your house or not?

A. I don't believe she did. The only time—you see, it is a known fact that I gamble. The F.B.I men and officers and everybody else know I gamble for a living and I was away from home all the time nights and I did inform her that she couldn't have any practice in prostitution out of my house. If she took anyone there it was when I was not there, but I never heard of any.

Q. Did you conspire with Lena Mae Wilkins to send her to Kodiak?

A. I have conspired none whatsoever with her.

Q. Can you explain to the jury how it is that Lena Mae Wilkins, [332] for example, knew about that wire that your brother sent?

A. The wires that my brother sent?

Q. Yes.

A. Well, when I went to Portland, as I stated, she was the only woman around the house and, naturally, when I left I told her to kind of look out after the house, you know, keep the fire in the kitchen and the hallways clean and everything and I mostly left her in charge of the house as far as upkeep. When I got to Portland—when I left I was short of funds—in fact I had to borrow some money to leave with to go to Portland, and I asked my brother to send me some money if he ever got any so when I got to Portland I sent Lena Mae a wire

(Testimony of James Taylor Yokely.)

and told her that everything was okay, that I arrived okay and that my wife had gone to Fairbanks and for her to tell Kirby to send me some money and as far as the amount, I don't know whether Kirby told her or not, but I imagine he did. Kirby sent me the money then I also sent Alvin Placide a telegram. It seems like the F.B.I. forgot to investigate on that. I sent him a telegram to wire me some money.

Q. Who was Alvin Placide?

A. He was a roommate in my house at that time.

Q. Did you see Lena Mae Wilkins when you were in Fairbanks?           A. No, I didn't.

Q. Did you go to Kodiak? Did you see Lena Mae Wilkins in Kodiak? [333]

A. I wasn't in Kodiak when Lena Mae was there. The last time I have been to Kodiak was last year.

Q. Did Lena Mae Wilkins send you any money when you were in Portland?

A. No. No one sent me any money.

Q. How many months did Lena Mae live at your place, Mr. Yokely?

A. Oh, I'd say from about April to when I was arrested and I demanded that they take her out of my house.

Q. How many months is that?

A. Well, 6 months, I guess—5 or 6 months.

Q. Did you take Lena Mae Wilkins to the Airport?

(Testimony of James Taylor Yokely.)

A. I haven't taken Lena Mae any place.

Q. Is it true that Lena Mae Wilkins checked your mail?

A. She picked my mail up at the Post Office several times. It depends upon who leaves the house first. When I would leave the house I would tell her that I was going up town and she would ask me to call for her mail. I get it at general delivery and she asked me to call for her. When she left I in turn asked her to call for mine and make one trip do. She did not check my mail, not to read it, no, but she did pick it up.

Q. Did you know on the morning that Lena Mae Wilkins contacted the law enforcement officers—did you have advance knowledge she was trying to contact them? A. Yes, I did. [334]

Q. And what did you do about it?

A. Layed in bed.

Q. Did you testify that Lena Mae had indicated to you on prior dates she was going to get you?

A. Similar to that, when she brought out the threat about this Pete Wetzal, she had been talking to and she told me who did I think they would believe, me or she.

Q. Now, at the time she made this threat was she talking about Margie? A. Pardon?

Q. Was she talking about Margie?

A. Talking about her? How do you mean?

Q. I mean, was she bitter over the fact you were going back to Margie?

A. She didn't appreciate the fact because, as I

(Testimony of James Taylor Yokely.)

stated, the matter that went on in the house and I may have put her to the wrong impression by the little dealings that did perform in the house between she and I, that we would be together.

Q. Now, Mr. Yokely, how does Lena Mae get when she is drunk?

A. Beg your pardon.

Mr. Kirkland: Object on the ground it is immaterial, your Honor.

The Court: Well, it may have some probative value. Objection overruled. He may testify.

Q. Have you had occasion to observe Lena Mae when she is drinking? [335] A. Yes.

Q. What is her reaction to liquor?

Mr. Kirkland: Objection, your Honor, on the ground it is repetitious.

The Court: Well, objection will be overruled. You may answer.

A. She can't drink at all. Once she starts drinking she just, I would say, is out of her head when she gets to drinking because nobody can say anything to her and even some nights that we would be in the house and just the fact that me by myself and in the house and she by herself and maybe one or 2 nights I would slip in her room or something and have little dealings, but it wasn't no—in other words, I was just mostly satisfying myself. That was all at the house.

Q. How much did Lena Mae drink every day?

Mr. Kirkland: Object on the ground it is immaterial, your Honor.



(Testimony of James Taylor Yokely.)

The Court: Objection sustained.

Mr. Buckalew: Your Honor, I think I can show that it is relevant. I am going to try and establish through this witness she consumed considerable amounts of alcohol over a period of time and that if she drank that much alcohol it would be impossible for her to raise \$8,000.00 as alleged in this statement. Now she is going to really have to hustle and leave that alcohol alone if she is going to get \$8,000.00. [336]

The Court: The court has ruled.

Mr. Kirkland: Your Honor, I think counsel is being facetious in making that statement. He should be instructed not to make any like statements and if he is anxious to testify he should take the witness stand.

The Court: If you make a motion for it to be stricken from the record the court will grant that motion.

Mr. Kirkland: I will, your Honor.

The Court: All right. The court at this time asks the jurors to disregard the statement made by Mr. Buckalew after the court ruled and it may be stricken from the record. You may proceed.

Q. Mr. Yokely, did you testify that your occupation is that of a gambler?

A. I believe the F.B.I. men and police officers can testify to that, too, because they have checked me.

Q. Have you ever been convicted of a felony?

(Testimony of James Taylor Yokely.)

A. Up until when I was arrested I didn't know that I was convicted of a felony. It was in 1945 I was under the impression that it was for receiving stolen property in San Francisco, California. Some boys——

Mr. Kirkland: Your Honor, I object to the witness going in and explaining the crime. He can only testify he was convicted or wasn't convicted. If he is going to explain then I can cross-examine him on all details. [337]

The Court: That is correct, but I point out to you Mr. Buckalew is sponsoring this witness and if he wants to go in and explain it he may do so. Objection overruled.

Q. Mr. Yokely, just answer whether or not you were convicted of that particular crime?

A. No, I pleaded guilty to receiving stolen property.

Q. You have been convicted of gambling?

A. Yes, numerous times.

Q. What did you do before you gambled? Were you a hod carrier?

A. Hod carrier. In fact, I started out right after my father got killed when I was 19 years old.

Q. Have you ever been convicted of violation of the Mann Act?

A. No, I haven't. Never have been involved in it.

Q. Have you ever been convicted of pimping?

A. No, I haven't.

Mr. Buckalew: Your witness, Mr. Kirkland.

The Court: You may cross-examine.

(Testimony of James Taylor Yokely.)

### Cross-Examination

By Mr. Kirkland:

Q. Mr. Yokely, in St. Louis, Missouri, in 1941, were you not convicted for the crime of robbery?

A. No, I wasn't convicted of the crime of robbery. I was [338] convicted—just a minute, let me get this straight.

The Court: Take your time.

A. I served 6 months. It was for trespassing, molesting.

Q. What?

A. It was for trespassing, molesting. I think that was the term that they used.

Mr. Dunn: I didn't get the witness.

A. Trespassing, molesting.

The Court: Molesting?

A. Yes.

Q. And in Portland, Oregon, in 1944, you were convicted of vagrancy?

A. I was picked up for vagrancy.

Q. Were you sentenced to 90 days?

A. I was picked up for vagrancy. I went into court for——

Q. Were you sentenced?

A. I can't explain.

The Court: Mr. Yokely, the court will have to instruct you that you must answer the questions and then if you want to explain it your counsel on redirect examination may bring that out.

(Testimony of James Taylor Yokely.)

A. What was the question?

Mr. Buckalew: Your Honor, I would like to object at this time. I think it is improper for Mr. Kirkland to examine this witness on his criminal record from the F.B.I. Kickback Sheet.

The Court: Objection overruled. You opened it up on [339] direct examination, counselor.

A. I don't have any objection of telling my——

Q. (By Mr. Kirkland): Answer the question, please? A. What was it again now?

Q. Were you sentenced 90 days to serve as a result of that conviction?

A. No, I wasn't. I was sentenced to 90 days and they gave me 159 days suspended, providing I left the State of Washington and that was a gambling charge more or less.

Q. Just a minute now. I will ask you the questions. In 1948 at Richland, Washington, were you convicted of vagrancy?

A. Richland, Washington?

Q. Yes. A. 1948?

Q. Yes.

A. I wasn't in Washington in 1948, and never have been to Richland, Washington.

Q. And in 1945 in California you were sentenced to 1 year for receiving stolen property?

A. That is what I was speaking about.

Mr. Buckalew: Your Honor, if he wants to ask——

A. That is the felony that you were asking about.

(Testimony of James Taylor Yokely.)

Mr. Buckalew: I want to object to Mr. Kirkland's making a statement "you were convicted and so on." If he wants to know [340] he can ask the witness a question. I mean, he is testifying. I just want him to put it in the form of a question.

The Court: I think the objection should be sustained. You should ask the question.

Mr. Kirkland: I intended to. I apologize.

The Court: Very well.

Q. Were you convicted of vagrancy in the State of Montana in 1949?

A. No. I was picked up in Montana.

Q. And you didn't pay a \$25.00 fine?

A. I was picked up for investigation.

Q. You didn't pay a fine there?

A. A \$25.00 fine, yes.

Q. You did pay the \$25.00?

A. Yes. I don't remember the sum, but it was a fine. I don't remember the exact sum.

Q. Were you convicted of gambling in 1950 at Anchorage? A. Yes.

Q. How many times?

A. Never was convicted. I think I have pleaded guilty 2 or 3 times.

Q. Same difference. How many times in 1950?

A. In '50?

Q. Uh-huh. A. Once. [341]

Q. Were you convicted for illegal entry on the military reservation in Anchorage? A. Yes.

The Court: What year, counselor?

Mr. Kirkland: In 1951, your Honor.



(Testimony of James Taylor Yokely.)

A. Yes.

Q. Were you convicted of disorderly conduct in 1953 at Tacoma, Washington?

A. Disorderly conduct, no.

Q. Were you convicted of anything on January 18, 1953, at Tacoma, Washington?

A. I was picked up in a gambling place on Broadway. They raided the place.

Q. Were you convicted of gambling and illegal entry on a military reservation in 1954?

A. Yes.

Q. Mr. Yokely, did you testify as to little deals between you and Lena Mae?           A. Little deals?

Q. Yes.

A. I was speaking about what went on in the house between she and I. We had little dealings together when we would get to the room.

Q. When you got together with her did you pay her?

A. Never was no money transferred. She never accepted no money [342] from me and I never accepted any from her. It was more of what you would call a love affair.

Q. Just a minute. Your counsel will bring out those things on direct examination.

Mr. Buckalew: He just answered the question fully.

Mr. Kirkland: Beg your pardon.

Mr. Buckalew: That comment was directed to the court, your Honor.

The Court: In that respect counsel examining

(Testimony of James Taylor Yokely.)

the witness have the right to object as to whether or not the answer is responsive to the question. Counsel examining the witness also has the right to state to the witness what kind of answer he wants, yes or no, or whether or not he answered the question, therefore, since he—when I say he, Mr. Kirkland has stated that he didn't want the witness to add anything to it, he has that right and, therefore, the objection will be overruled.

Q. And did you testify that generally you sat around and watched T.V.? A. Yes.

Q. And did you testify that she drank heavily all the time? A. Not all the time, no.

Q. Well, did you testify that she drank heavily most of the time?

A. When she gets to drinking, yes, once she starts.

Q. How long has it been since you have had a job, Mr. Yokely? A. 1942. [343]

Q. 1942? A. Yes.

Q. What kind of automobile do you drive?

A. A Buick.

Q. Do you own your home? A. Yes.

Q. Is the title of your home in your name?

A. Yes.

Q. When Lena Mae Wilkins went to Fairbanks did you loan her your luggage to pack her clothing in? A. No, I didn't.

Q. Did not? A. No.

Q. You do have luggage though? A. Sure.

(Testimony of James Taylor Yokely.)

Q. And did you testify that you didn't see Lena Mae when you were in Fairbanks?

A. I did not see Lena Mae Wilkins in Fairbanks.

Q. You knew she was there?

A. Yes; I heard she was there. In fact, I was pretty sure she was there, yes. I——

Q. You have answered the question. Did you tell Lena Mae that whenever she sent the money to you to use an assumed name, by letter, because you didn't want a Federal investigation? [344]

A. I wouldn't have no cause to tell Lena Mae nothing like that because she wasn't going to send me no money.

Q. Then do you deny receiving \$160.00 in a letter registered to you, registered for \$100.00, in the month of April or May?

A. Yes; I deny receiving \$160.00. I received \$100.00 in a registered mail.

Q. With the return address as Carl Samuels?

A. From Carl Samuels.

Q. But you didn't tell her to do that because you didn't want a Federal investigation?

A. Lena Mae doesn't have nothing to do with that. Carl Samuels sent me this money.

Q. Well, did you send \$45.00 to Bill Jordon at Kodiak?

A. I wired him \$45.00.

Q. And did you wire the \$45.00 to give to Lena Mae?

A. I wired him \$45.00 because he called me up

(Testimony of James Taylor Yokely.)

and asked me to let him have a piece of money. He and I exchanged money all the time.

Q. Now you have answered the question. Now, did you send a telegram to Lena Mae Wilkins reading as follows: "Margie gone to Fairbanks. Everything worked out okay. Will see you soon"?

A. Yes.

Q. Now, where did you send that telegram from?

A. From Portland, Oregon. [345]

Q. From Portland? A. Yes.

Q. Is your house a bawdy house?

A. No; it isn't no bawdy house.

Q. Is not? A. No.

Q. Did you join your wife down in Portland?

A. Yes.

Q. What did you mean in your telegram that "everything is okay. Margie gone to Fairbanks"?

A. What did I mean in the telegram?

Q. Yes. A. That I arrived there okay.

Q. I mean about this part, "Margie gone to Fairbanks"?

A. I just said that. That is all. Everything is okay. I arrived okay. She knew what I was going there for.

Q. Did your wife, Margie, go to Fairbanks from Portland? A. Yes.

Q. Did she have a job there?

A. A job where?

Q. At Fairbanks.

A. Did she have a job in Fairbanks? No. She was down in Portland for a year, I imagine, at least. She was out for a year.

(Testimony of James Taylor Yokely.)

Q. I don't care where she was before, Mr. Yokely. Just answer [346] the questions. Did you buy her ticket to Fairbanks?

A. Did I buy who a ticket?

Q. Your wife, Margie.

Mr. Buckalew: Object on the ground it is immaterial, your Honor.

A. She bought her own ticket.

Q. Well, now, weren't you and your wife, Margie, planning on going back together when you went down to Portland?

A. Were we planning on going back together?

Q. Yes. A. I don't know.

Q. Didn't you testify that you were just a few moments ago?

A. I said after I got down there we may go back together and we got to talking—she called me and wanted to see me.

Q. Well, how long did your wife stay in Fairbanks? A. Oh, 2 or 3 weeks, I imagine.

Q. Is your wife a prostitute?

A. Not as I know of.

Q. Well, you would know about it, wouldn't you, if she were? A. I said, not as I know of.

Q. But you wouldn't say that your wife isn't a prostitute?

A. If I knew it I would say—I don't know. She never practiced in front of me.

Q. Did she ever give you any money?

Mr. Buckalew: Object on the ground it is immaterial. [347]



(Testimony of James Taylor Yokely.)

The Court: What is the materiality, Mr. Kirkland?

Mr. Kirkland: Your Honor, I probably should approach the bench with counsel. I wouldn't want to state the grounds in front of the jury.

The Court: You may do so.

(Whereupon, all counsel approached the bench and the following proceedings were had out of the hearing of the jury.)

Mr. Kirkland: I contend it is material because counsel has brought out testimony about he and his wife going back together and the defendant denies that he maintains a bawdy house.

Mr. Plummer: He also testified that prior to September 7 he told Lena Mae Milkins they were going back together and it was her reaction to that that caused her to turn against him.

The Court: On that basis I think it is material, therefore, the objection will have to be overruled.

(Thereupon, all counsel return to their respective tables and the following proceedings were had.)

The Court: The objection is overruled. Court will stand in recess for 10 minutes.

(Whereupon, at 3:06 o'clock p.m., following a 10-minute recess, court reconvenes and the following proceedings were had.) [348]

The Court: Let the record show all the jurors are back and present in the box.

(Testimony of James Taylor Yokely.)

The Clerk: If the court please, the Communications System has provided copies of Government's Exhibits 4 and 5.

The Court: I wonder if counsel would mind checking these copies so they may be substituted in lieu of the originals. The Clerk advises the court that one of the sergeants in the A.C.S. has checked them and it is his opinion that everything checks word for word, however, counsel have a right to check further if they so desire.

Mr. Buckalew: Your Honor, I don't see any point in checking them. It is certified by Captain Martin and that is good enough for me.

The Court: Very well. Then, there being no objection, the copies certified to as being made of the wires that they have in the office of the Alaska Communications System may now be substituted for Government's Exhibits 4 and 5, respectively, and at this time the court would ask the clerk to substitute the numbers to the respective certified copies and to return the copies given by the A.C.S. back to Captain Martin or to some duly authorized representative. You may proceed then, Mr. Kirkland.

Q. (By Mr. Kirkland): Mr. Yokely, did you testify that you joined your wife down in Portland?

A. Yes. [349]

Q. Now, how long had your wife been in Portland?

A. Well, I think she told me she had been there 3 or 4 months.

(Testimony of James Taylor Yokely.)

Q. Did she have a job down there?

A. Not that I know of.

Q. Did your wife own a Cadillac at that time?

A. She owns one now.

Q. She still owns one? A. Yes.

Q. Is your wife also known as Rusty Swanson in Portland? A. I think so.

Q. You think so. Did you stay at the Anderson Hotel with your wife in Portland? A. No.

Q. You did not? A. No.

Q. Where did you stay?

A. At the Anderson Hotel by myself.

Q. At the Anderson Hotel by yourself?

A. Yes.

Q. When did your wife leave Anchorage to go to Portland?

A. When we separated. She didn't leave Anchorage going to Portland. She left Anchorage going home after we separated.

Q. What year was that?

A. I think it was June, '53. I got a mortgage on my home. She and I decided to bust up and I borrowed some money on my home [350] and gave it to her.

Q. Just answer the question now. Mr. Yokely, did you file income tax return for the past year?

Mr. Buckalew: Object on the ground it's immaterial. He is not charged with tax violation of any kind.

The Court: What relevancy, counselor?

(Testimony of James Taylor Yokely.)

Mr. Kirkland: I think it would go to credibility, your Honor.

Mr. Buckalew: Go to credibility?

The Court: Under what theory of the law?

Mr. Kirkland: Well, if the man's not complied with the duty—I don't know whether he did or not—if he hasn't complied with the duty that is imposed upon him to carry out and he's driving automobiles, traveling all over the country, I certainly think it should go towards his credibility.

Mr. Buckalew: Your Honor, I have one thing to say. His Honor's well aware that you are not allowed to attack anybody's credibility by a mere act of misconduct. That is not the way it is done. I object to it on that ground.

The Court: Well, on both objections, the court will sustain the same. We can't try out every other problem that may confront this defendant. He's charged with one crime only.

Q. (By Mr. Kirkland): Mr. Yokely, were you convicted of assault and battery here in Anchorage in 1954? [351]           A. Against Lena Mae?

Q. Well, assault and battery against anybody?

A. Against Lena Mae.

Q. Mr. Yokely, now when was the time that Lena Mae told you she was going down to see Pete Wetzel?

A. Oh, she didn't direct. She said she was going to see him. She brought out threats. She didn't make no specific time.

(Testimony of James Taylor Yokely.)

Q. Well, I didn't ask you the time—when she said the time. When did she make that threat to you?

A. Oh, I'd say three or four weeks previous to my arrest, I imagine.

Q. And you had seen her with Pete Wetzel along about that time, too?

A. Several times in bars. He sits up, buys them drinks, and everything—tries to get them to talk.

Q. And that is the reason you took this threat seriously and remembered it?

A. Beg pardon?

Q. And is that the reason you took this threat seriously?

A. I didn't take it seriously because I didn't pay any attention to it because I knew she had nothing to do with me. No harm. I merely had taken it for a conversation.

Q. Did they appear to be pretty good friends?

A. Who? Pete Wetzel and Lena Mae?

Q. Yes. [352]

A. I notice that every time he's down there at a bar, he make it his business to try to corner her off and buy her drinks and talk to her and try to get her to——

Q. And you saw them quite often. Is that not correct?      A. Yes.

Q. Just before this occurred?

A. Not just before it occurred.

Q. Well, three weeks before, then?

A. Yes; around Anchorage about.



(Testimony of James Taylor Yokely.)

Q. Would it surprise you, Mr. Yokely, if I were to tell you Mr. Wetzel been transferred from Alaska a long time before this?

A. No; because I don't think so, unless my timing is a little wrong.

Mr. Kirkland: No further cross-examination.

The Court: Any redirect?

Mr. Buckalew: No further questions, your Honor.

The Court: That is all. You may step down.

(Thereupon, the witness was excused and left the witness stand.)

The Court: You may call your next witness.

Mr. Dunn: Mr. Albert Dungee, your Honor.

The Court: Let the record show this is the same Mr. Dungee who testified before the court on the matter, and before doing so, he was sworn under oath. You may come forward and take [353] the witness stand without being resworn.

### ALBERT L. DUNGEE

called as a witness for and on behalf of the defendants and having previously been duly sworn, testifies as follows on:

#### Direct Examination

By Mr. Dunn:

Q. Will you state your name, please?

A. Albert L. Dungee.

Q. Where do you work, Mr. Dungee?

(Testimony of Albert L. Dungee.)

A. Casa Del Rosa now.

Q. Do you know the defendant, Lena Mae Wilkins?      A. I do.

Q. Did you see her the day that James Yokely was arrested and eventually brought into court on this charge?      A. That morning.

Q. You did see her that morning?      A. Yes.

Q. About what time was that?

A. Just right after we opened; between 9:00 and 10:00.

Q. Now, what was your occupation then?

A. Bartender and janitor—little of everything.

Q. At what place?      A. H & M Barbecue.

Q. Please tell the court where you saw Lena Mae Wilkins at [354] approximately 9:00 to 10:00 o'clock on that morning, and any conversation that took place between you, and anything that you observed concerning her condition—her physical condition?

A. Well, that morning I was in the kitchen we had there where we make our barbecue. Why, she come in and she yelled at me for a drink and that time when I got to the back of the bar, why, I refused her. I was arguing with her. I refused her a drink. It looked like she was high so I went on back to doing my work and she kept arguing about the drinks and I just say, "I refuse." That is all and I never gave her no more.

Q. Why did you refuse her a drink?

(Testimony of Albert L. Dungee.)

A. Usually when she gets high she always gives me a hard time.

Q. Was she high then?

A. To my seeing her I know she was high at the time.

Q. Did you think she was too drunk for you to serve her a drink?

A. I refused her at that time. I did.

Q. Is that the reason you did? A. Right.

Q. Well, did she accept your refusal or did she insist upon getting a drink?

A. Well, at the time I just refused. I went on back to doing my work. I put a quarter in the juke box and started it to playing to keep from listening to her.

Q. What was she doing? [355]

A. Sitting at the bar.

Q. That doesn't make any noise; just sitting at the bar.

A. Talking, mumbling, raising hell with me.

Mr. Kirkland: I object to counsel leading the witness.

The Court: Well, objection is overruled. You may answer.

Q. (By Mr. Dunn): Did you see her go to the telephone?

A. She was sitting at the telephone right at the corner of the bar.

Q. Did you see her walk at any time?

A. No; she was sitting at the time I came from

(Testimony of Albert L. Dungee.)

the kitchen. She was already at the bar and was sitting down.

Q. Now, how long have you known the defendant Wilkins?

A. Off and on for the last—well, I came here in '51—since about '52.

Q. Have you seen her both drunk and sober?

A. Many times.

Q. Can you tell from observing her when she is drunk and when she is sober?

A. When she is not drinking she is a fine person, well educated. When she is drinking she is the opposite way.

Q. There is an obvious difference between her as an individual when she is drunk and when she is sober?

A. That is right. [356]

Q. How was her voice?

A. She talks quiet when she is not drinking. She is peaceful, good conversation, but when she is drinking she is cussing or making arguments all the time.

Q. Did you understand clearly what she said?

A. When she is drinking, why, you can understand her plain enough. You take those cuss words sometimes she gives you.

Q. On this particular morning and at the time that you observed Lena Mae Wilkins between approximately 9:00 and 10:00 o'clock, in your opinion was she responsible for her actions or not?

A. To my knowledge, she wasn't responsible.

Q. You wouldn't have trusted her?

(Testimony of Albert L. Dungee.)

A. No, sir.

Mr. Dunn: No further questions, your Honor.

The Court: You may cross-examine.

Cross-Examination

By Mr. Kirkland:

Q. You are the same Mr. Dungee that testified earlier in these proceedings before the court and in the absence of the jury? A. Yes.

Q. And did you not testify at that time that Lena Mae Wilkins was not—not only that you refused to serve her on that [357] occasion, but that in the future she was barred out of the H & M because she was a stoolie?

A. That was after this happened.

Q. Didn't you testify to that here before the court? A. No; I did not.

Q. You didn't say she was refused service in there after that time because she was a stooley?

A. She was barred from the H & M after this trouble came up and Yokely was arrested.

Q. After Yokely was arrested she was barred from the H & M? A. That is right.

Q. And now you testified that she was staggering and everything, is that correct, when she was down at your establishment?

A. Just like I told her attorney, I didn't see her walk. I was in the kitchen when she came in.

Q. Then you didn't see her walk?

A. Right.



(Testimony of Albert L. Dungee.)

Q. Was she able to hold her head straight up or was it wobbling and everything?

A. She was leaning on the bar just mumbling, arguing for me to serve her.

Q. Did you see her dial the number to call the F.B.I. or the police?

A. She used the telephone twice and seemed like she didn't get no number at all or didn't get her party. [358]

Q. Did you dial the number for her?

A. No, sir.

Q. Well, then, she was sober enough to dial the telephone number, is that correct?

A. I guess lots of drunks can do that.

Q. Is Yokely a friend of yours?

A. Just an everyday friend.

Q. Did you discuss what your testimony was going to be with Mr. Yokely? A. I have not.

Q. Did you discuss it with his attorney?

A. Well, they called me and asked me about this; what I knew about that morning.

Q. I believe you testified that you were only convicted of some minor crime about 20 years ago, is that right? A. Once again in Los Angeles.

Q. That was about 20 years ago, wasn't it?

A. No; that was in '51, I think. '51 or '52.

Q. '51 or '52. What was that crime?

A. Reckless driving.

Q. And you have been convicted of no other crime?

(Testimony of Albert L. Dungee.)

A. That is all, outside of the one in Pennsylvania in 1929.

Q. That was the liquor violation? A. Yes.

Q. Are you still employed down at the [359] H & M? A. No; we are Casa Del Rosa now.

Mr. Kirkland: No further questions.

The Court: Any redirect?

Mr. Dunn: Yes, your Honor.

### Redirect Examination

By Mr. Dunn:

Q. How many times did you see Lena Mae dial a number on the telephone, Mr. Dungee?

A. She used the telephone about 3 or 4 times.

Q. How many numbers did she get?

A. The first couple of times I was behind the bar she didn't get any party.

Q. She only got one party out of the 2 or 3 tries? A. Right.

Q. Now, you heard Mr. Kirkland ask you if you talked to me concerning your testimony?

A. Yes, sir.

Q. Did I in any way coach you concerning your testimony? A. No, sir; you just asked me——

Mr. Kirkland: I object.

The Court: Objection overruled. You asked the question and opened up the field. [360]

Mr. Kirkland: I certainly didn't want the court to think I was trying to cast any such inference. Every attorney talks to his witnesses.

(Testimony of Albert L. Dungee.)

Mr. Dunn: No further questions along that line.

The Court: Any recross?

### Recross-Examination

By Mr. Kirkland:

Q. How close to Lena Mae and the telephone were you when she was dialing?

A. The bar is made in kind of an "L" shape——

Q. I mean, approximately how many feet?

A. 10 or 12.

Q. Then you don't know whether she got a busy signal or what?

A. No; she hung up.

Mr. Kirkland: No further questions.

A. There wasn't no conversation

Mr. Kirkland: But you don't know whether it was a busy signal or not?

A. No.

Mr. Kirkland: No further questions.

The Court: That is all. You may step down.

(Thereupon, the witness was excused and left the stand.) [361]

The Court: You may call your next witness.

Mr. Buckalew: Your Honor, the defense rests—the defense for James Taylor Yokely.

Mr. Dunn: The same is true for defendant Wilkins.

The Court: Very well. Is there any rebuttal testimony?

Mr. Kirkland: Yes, your Honor. I would like

to call Mr. Hartlieb, the United States Commissioner.

The Court: Very well.

Mr. Kirkland: Your Honor, while the bailiff is contacting that witness I would like to call Mr. Buckalew.

Mr. Buckalew: Your Honor, may I approach the bench?

The Court: You may.

(Whereupon, all counsel approach the bench and the following proceedings were had out of the hearing of the jury.)

Mr. Buckalew: Your Honor, I think Mr. Kirkland is going to call me and ask me whether or not I saw Lena Mae Wilkins in the Commissioner's office on the day that she was in there. He is going to ask me whether or not she was drunk. Now, I don't think it is fair to me. I represent one of the defendants and I am not going to lie up there under oath, but if I testify truthfully we might as well forget it.

Mr. Kirkland: Eye witness.

The Court: Well, here, Mr. Kirkland——

Mr. Buckalew: It is putting me in an unfair position. [362] I wanted to get out of this to begin with. I figured he was going to do this all along.

The Court: Mr. Buckalew, the court appointed you as also Mr. Dunn. I don't think it is absolutely material to your case, is it, Mr. Kirkland?

Mr. Buckalew: How can I argue it, your Honor? That is, the question of whether or not when I saw

the woman—I mean, I wouldn't even be able to argue the case.

Mr. Kirkland: Certainly he would be able to argue. When counsel calls him to testify in his behalf he wouldn't be calling himself. It would be the prosecution that argues.

Mr. Dunn: Your Honor, I have got something to say. I suggest Mr. Buckalew can and I suggest he does claim a privilege against testifying against his client—rather, against my client because there are any number of things that Mr. Buckalew knows have been revealed to him at a time when this defense was being prepared jointly and that includes testimony concerning what took place at the Commissioner's office and I don't think he can keep that confidential and testify as to any matter which he received in confidence, although he received the confidential communication subsequent to the incident in question.

The Court: I think, Mr. Kirkland, it would be highly improper in light of the circumstances.

Mr. Kirkland: Yes, sir. Very well.

(Whereupon, all counsel returned to [363] their respective tables and the following proceedings were had in the presence of the jury.)

The Court: The motion to call Mr. Buckalew by the Government is denied by the court.

Mr. Kirkland: Call Mr. Hartlieb, your Honor.



GORDON L. HARTLIEB

called as a witness for and on behalf of the Government, in rebuttal, and, having previously been duly sworn, testifies as follows on:

Direct Examination

By Mr. Kirkland:

Q. State your name, please, sir?

A. Gordon Hartlieb.

Q. You are the United States Commissioner here at Anchorage? A. Yes, sir.

Q. Mr. Hartlieb, on September 7, 1954, did the defendant, Lena Mae Wilkins, appear before you on that date? A. Yes, sir; she did.

Q. And did she sign a document in front of you—or swear to the truth of that document?

A. She swore to the truth of it.

Q. Then she didn't sign it in front of you, is that correct, sir?

A. No, sir; she did not sign it in front [364] of me.

Q. But she did swear to the truth of it?

A. She swore to the truth of it and she acknowledged it was her signature.

Q. Now, was the defendant, Lena Mae Wilkins, drunk? A. In my opinion, no.

Q. Do you let drunk people sign documents in front of you which you notarize?

A. Not if I know they are intoxicated; no, sir.

Q. Well, how did the defendant appear to you? Did she appear to be acting wild?

(Testimony of Gordon L. Hartlieb.)

A. No, sir; she appeared normal.

Mr. Kirkland: Your witness.

The Court: You may cross-examine.

### Cross-Examination

By Mr. Dunn:

Q. You say it is the policy of your office, Mr. Hartlieb, not to allow a drunk person to sign a statement in your presence?

A. That is my policy, sir; not a policy of my office.

Q. And this statement was signed before you?

A. No, sir.

A. That is right. I beg your pardon. Well, then, if Lena Mae Wilkins had, in your opinion, been drunk at the time she [365] appeared before you, you would not have allowed her to have signed the statement before you, would you? A. No, sir.

Q. Now, would it make any difference to you as to whether or not a person signed the statement before you or whether or not they simply acknowledged their signature before you?

A. For what purpose, sir?

Q. Well, would you place any different criterion with respect to sobriety on whether or not a person was acknowledging a signature before you or whether or not a person——

Mr. Kirkland: Your Honor, I object to anything further along this line. Counsel hasn't laid the proper foundation.

The Court: I think the objection should be over-

(Testimony of Gordon L. Hartlieb.)

ruled for the reason this is cross-examination. There may be some technical reason for it, counselor, so the objection will be overruled.

Q. I will finish my question, Mr. Hartlieb. Would you use any different criterion with respect to sobriety in deciding whether or not you were going to allow a person to sign a statement before you or in deciding whether or not you were going to allow a person to acknowledge a signature before you?

A. I have the feeling that there is less reason—if she were signing it in front of me for the first time and she made the statement in front of me I would certainly be more [366] concerned about her sobriety at that time than I would if a statement was brought before me and she was sober, as at that time, I wouldn't be as apt to be concerned about her condition at the time she made the statement, just so long as she was in control of all her faculties at the time she acknowledged it and admitted the statement was all true and that it was her signature.

Q. Then do I understand your testimony to be that you merely assumed that she was sober when this statement was in fact signed?

A. I didn't assume anything, sir. I had no reason to assume anything. She appeared to me to be completely normal and I don't ask everyone that signs a statement in front of me, "Are you sober?"

Q. But this statement wasn't signed?

(Testimony of Gordon L. Hartlieb.)

A. Or acknowledges a statement in front of me. Excuse me.

Q. Were you relying upon the fact she——

Mr. Kirkland: Your Honor, I object to any further questions along this line on the ground it is immaterial.

The Court: Objection overruled. He may answer.

Q. Were you relying upon the fact that the defendant was accompanied by a number of law enforcement officials so as to remove from your own shoulders the burden of having to decide her state of sobriety when she signed the statement?

A. That wasn't even a consideration, Mr. Dunn. It is my [367] position that a state of inebriation is out of the ordinary for someone coming in and attesting to a sworn statement.

Q. Well, now, since this statement wasn't signed before you, did you examine the signature rather closely?

A. I asked her if it was her signature.

Q. Did you examine the signature rather closely?

A. What do you mean by examine it closely?

Q. Looking at it over an abnormal period of time? A. No, sir; I can't say that I did.

Q. Now, I ask you, Mr. Hartlieb, to examine that signature and state whether or not, in your present opinion, that is a normal signature or not?

Mr. Kirkland: Your Honor, I object to that—don't answer the question until the court hears the

(Testimony of Gordon L. Hartlieb.)

argument—on the ground it is completely irrelevant and has no bearing—there has been no foundation laid whatsoever for a question like that.

The Court: The objection will be sustained, but for the reason—how would this witness know or have any way of knowing it was made by a sober person or a person highly inebriated?

Mr. Dunn: Your Honor, this witness is testifying for the purpose of supporting the veracity of that statement.

The Court: No; I don't think he is, counselor. I take issue with you. He is testifying that the witness, Lena Mae Wilkins, came before him and acknowledged to him in his presence [368] that that was her signature, that was her statement.

Mr. Dunn: Your Honor, I feel that I have the unfortunate duty here of examining into whether or not on rather close examination Mr. Hartlieb should not have refused to have taken the oath of this witness.

The Court: Counselor, you have the right on cross-examination to go into the condition of the person making the statement at the time. The court has sustained your position in respect thereto for the reason stated, therefore, that should be unequivocal as to why I ruled that way. This witness would never know whether or not this statement was made while the affiant was sober or highly intoxicated. There is no indication in the record that he is familiar with this signature aside from the one time.



(Testimony of Gordon L. Hartlieb.)

Q. (By Mr. Dunn): At the bottom of this statement, Mr. Hartlieb, there is some writing in green ink and a signature in either black or blue ink—I think it is black. Will you tell me who put that writing on this statement?

A. In green ink, sir?

Q. Yes. A. I don't know, sir.

Q. The signature belongs to whom?

A. Myself.

Q. That is your signature? [369]

A. Yes, sir.

Q. Now, did you read the writing in the green ink before you signed that?

A. I don't remember.

Q. What does the writing in the green ink say?

A. "Subscribed and sworn before me this September 7, 1954, Gordon W. Hartlieb."

Q. You don't remember whether you read that before you signed it or not?

A. No, sir; I don't.

Q. Your signature appears immediately after it, does it not? A. Yes, sir.

Q. As a matter of fact it is true, is it not, that your signature is in the middle of the writing in the green ink?

A. Well, that depends on what you are going to call the middle and the beginning and the end.

Q. Isn't it true? A. If you mean——

Q. If the writing in green ink is both before and after your signature? A. Yes, sir.

Q. You have no reason to think that the writing

(Testimony of Gordon L. Hartlieb.)

in green ink might have been placed on there after you signed it?

A. No, sir. I just don't have an opinion on it. I don't remember having read it. [370]

Q. Might or might not have been?

A. Might or might not have been.

Mr. Dunn: No further questions.

The Court: Any redirect?

Mr. Kirkland: No redirect.

The Court: That is all. You may step down.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Kirkland: Call Mr. McLaughlin.

### GEORGE M. McLAUGHLIN

called as a witness for and on behalf of the Government, in rebuttal, and, having previously been duly sworn, testifies as follows on:

#### Direct Examination

By Mr. Kirkland:

Q. State your name, please, sir?

A. It is George McLaughlin.

Q. And you are an attorney at law?

A. I am.

Q. And you are also the City Magistrate for the City of Anchorage? A. I am.

Q. Now, Mr. McLaughlin, on or about September 7, 1954, did the defendant, Lena Mae Wilkins,

(Testimony of George M. McLaughlin.)

come to your office in the company of Mr. Sachen of the F.B.I. and Mr. Pass, a City Detective? [371]

A. I can't answer that, sir, because I cannot identify the defendant as of that day.

Q. Now, Mr. McLaughlin, how many times has Mr. Sachen and Mr. Pass brought a Negro woman to your office for the purpose of signing a complaint or for any other purpose? A. Only once.

Q. And you do recall them bringing a Negro woman to your office on one occasion?

A. Yes; I distinctly remember it, sir.

Q. And there is no other occasion that they brought anyone to your office? A. Never.

Q. Now, do you know for what purpose they brought this person to your office?

A. My recollection is on that occasion, whatever the date might have been, that Detective Pass and Mr. Sachen of the F.B.I. came to my office with a Negro woman for the purposes of swearing out a complaint.

The Court: May I interrupt you, please? I don't believe you have identified the office of this witness.

Mr. Kirkland. He said he was the City Magistrate.

The Court: I stand corrected. I didn't recall it.

Q. Was the person in the company of Mr. Sachen and Mr. Pass intoxicated?

A. No. [372]

Q. Sober? A. She was sober.

Mr. Kirkland: Your witness.

The Court: You may cross-examine.

(Testimony of George M. McLaughlin.)

Cross-Examination

By Mr. Dunn:

Q. Was this the Negro woman, Mr. McLaughlin?

A. That I cannot say, Mr. Dunn.

Q. How long did you have her under observation?

A. Approximately, within my recollection, it was about 5 minutes that she was physically present in my office. That is approximate.

Q. Was she standing or sitting?

A. My recollection is she was sitting.

Q. She came in and sat down?

A. Yes. I cannot recall whether I offered her a chair, but my recollection is that she definitely was sitting.

Q. That she was sitting? A. Sitting, yes.

Q. Now, how far would she have had to have walked from the time she came into your office until she sat down in the chair in your office? [373]

A. It would be approximately 7 or 8 feet, that is when she would have first come within my sight.

Q. And approximately the same distance to leave?

A. Approximately the same distance to leave.

Q. And you can't remember what she looks like, but you can remember she was sober?

A. Yes.

Mr. Dunn: No further questions.

The Court: Any redirect?

Mr. Kirkland: Yes, your Honor.

(Testimony of George M. McLaughlin.)

Redirect Examination

By Mr. Kirkland:

Q. Now, Mr. McLaughlin, by your last answer you meant you couldn't describe the woman's facial features, is that correct?      A. That is true.

Q. In other words, in your official capacity do you allow a drunk person to sign a complaint charging someone with a crime?

A. I never have. I have never permitted it. If there is a question in my mind I have requested that the chief witness or the complaining witness return when he or she was sober. I have always refused it as a matter of policy. I have never [374] permitted it.

Mr. Kirkland: Thank you, sir. No further questions.

The Court: Mr. McLaughlin, the court would like to know what time of day it was that Mr. Sachen and this colored woman——

A. My recollection, your Honor, is that it was in the afternoon.

The Court: In the afternoon?

A. Yes, sir, because the way I can recall it is that I met either Detective Pass or Mr. Sachen, one or the other or possibly both, and told me they would have a lady in the office that afternoon.

Mr. Dunn: Your Honor, I have another question, if I may.

The Court: Very well.

Mr. Dunn: Did this Negro woman sign a complaint?



(Testimony of George M. McLaughlin.)

A. I cannot recall and I didn't even attempt to refresh my recollection by looking at the court's records because I wanted to present the evidence to you the way I recalled it without refreshing my recollection.

Mr. Dunn: You don't know whether you allowed her to or not?

A. I can't recall. All I can recall is that either she or Detective Pass signed the complaint. That is the only thing I can recall.

Mr. Dunn: One or the other?

A. One or the other. [375]

Mr. Dunn: No further questions.

The Court: That is all. You may step down.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Kirkland: Your Honor, I would like to call Mr. Fitzgerald. I believe it is about time for a recess and I could get him down at the office then.

The Court: Very well. The court will stand in recess for 10 minutes.

(Whereupon, at 4:10 o'clock p.m., following a 10-minute recess, court reconvenes, and the following proceedings were had.)

The Court: Let the record show all the jurors are back and present in the box. You may call your next witness.

Mr. Kirkland: Mr. Fitzgerald.

## JAMES M. FITZGERALD

called as a witness for and on behalf of the Government, in rebuttal, and, having previously been duly sworn, testifies as follows on:

## Direct Examination

By Mr. Kirkland:

Q. State your name, please, sir.

A. My name is James M. Fitzgerald.

Q. Your occupation? [376]

A. I am Assistant United States Attorney.

Q. Third Division?

A. In this Division, yes.

Q. Mr. Fitzgerald, on September 7, 1954, was the defendant, Lena Mae Wilkins, in your office?

A. I don't recall the date, but she was in the office on 2 occasions. I remember on one occasion she came in to testify—or she came in concerning a statement about a Mr. Yokely.

Q. And you remember that occasion?

A. I remember that occasion, yes.

Q. And on that occasion did you take the defendant, Lena Mae Wilkins, before the United States Commissioner?

A. Yes; she went down to the Commissioner's office.

Q. Was the defendant, Lena Mae Wilkins, drunk or sober on that occasion?

A. She wasn't drunk to my knowledge. She gave no indication of drunkenness and I certainly had no—my impression is that she was sober. The fact

(Testimony of James M. Fitzgerald.)

she was drunk was not raised or the question of drunkenness was not raised until some time later, I believe.

Q. And she appeared perfectly normal to you on that occasion?

A. Well, I hadn't seen her on other occasions, but there was nothing exceptional about her appearance, nothing to indicate she was intoxicated. [377]

Mr. Kirkland: Thank you, sir. Your witness.

The Court: You may cross-examine.

### Cross-Examination

By Mr. Dunn:

Q. Mr. Fitzgerald, when I cross-examined you before, did I ask you whether or not you had any conversation with Lena Mae Wilkins just prior to her appearance before the Grand Jury when the matter of James Yokely was presented to the Grand Jury? A. Yes; you did.

Mr. Kirkland: I object to it, your Honor, on the ground it is immaterial and request the answer be stricken.

The Court: What is the materiality of it, Mr. Dunn?

Mr. Dunn: I was trying to save time. I can lay the foundation for where he was at what time and who he was talking to and everything, if you wish, but I was simply trying to cut it short.

The Court: Counsel, I suppose we will have to follow the customary accepted rules and practice as there has been an objection made.

(Testimony of James M. Fitzgerald.)

Mr. Kirkland: Of course, my objection is based on a conversation at a later date. I am not objecting to the conversation [378] pertaining to the time the statement was given. It is what occurred after that.

The Court: Now, in that respect, that was not brought up on direct examination and, therefore, you cannot go beyond the scope of direct examination.

Mr. Dunn: So far as the scope of the testimony is concerned, your Honor, the question is preliminary to cross-examining the witness on the state of intoxication of Lena Mae Wilkins on the afternoon of September 7.

The Court: Well, if it is preliminary and you will assure the court you will connect it up, the objection will be overruled.

Mr. Dunn: Maybe I can approach it from another standpoint and which will be more to Mr. Kirkland's satisfaction, your Honor.

The Court: Very well.

Q. (By Mr. Dunn): Mr. Fitzgerald, did you have any conversation with Lena Mae Wilkins prior, immediately prior to her appearance before the Grand Jury in connection with the Grand Jury considering the indictment of James Yokely?

A. Yes; I did.

Mr. Kirkland: I object to that, your Honor, on the ground it is immaterial. Anything occurring after the signing of the statement could have no bearing on the issues to be decided [379] here.

(Testimony of James M. Fitzgerald.)

The Court: The court will have to sustain the objection at this time, Mr. Dunn.

Mr. Dunn: If the court would like I will approach the bench and tell the court what I am leading up to.

The Court: Well, maybe you had better do that because as it stands now the court would have to sustain the objection made by Mr. Kirkland.

(Thereupon, all counsel approached the bench and the following proceedings were had out of the hearing of the jury.)

Mr. Dunn: The same thing I asked him before, your Honor—I intend to ask him whether or not at that time he said to the defendant Wilkins that she was sober and he would swear to that fact and the purpose of eliciting testimony is to draw a comparison between the definiteness of his statement one time and the rather luke-warm statement he is currently making. It is his general observation. He doesn't recall anything abnormal. One time he made a specific statement and now his testimony is far weaker than it was.

The Court: What is your position, Mr. Kirkland?

Mr. Kirkland: It is absolutely immaterial and could have no bearing, couldn't show anything. I don't see where it would prove anything.

Mr. Dunn: Inconsistent statements of a witness is [380] material.



(Testimony of James M. Fitzgerald.)

The Court: That is the position the court takes. Do you maintain it is inconsistent?

Mr. Kirkland: No; I don't think it is inconsistent. As I remember it from the first time Mr. Fitzgerald said he advised her that when she said she was drunk that he would have to testify she was sober and that is just what he has done today.

The Court: In that case you shouldn't have any objection to the question being asked.

Mr. Kirkland: It is just immaterial. It is a self-serving declaration.

The Court: Well, in light of all the circumstances the court feels he will have to overrule the objection.

(Thereupon, all counsel returned to their respective tables and the following proceedings were had in the presence of the jury.)

The Court: Based upon the discussion at the bench the court overrules the objection. You may answer.

A. I did answer.

Q. (By Mr. Dunn): You answered, did you not, you did have a conversation?

A. Yes; I had a conversation.

Q. What did you say to her at that time concerning her state of sobriety?

A. Well, I explained it this way, Mr. Dunn, the only reason I [381] had her in my office was because I had heard of her past reputation——

Q. Excuse me one second. I am not trying to cut

(Testimony of James M. Fitzgerald.)

you off at all. Is this the second time you saw the defendant Wilkins?

A. No. The only reason she went to the Commissioner's office was because I wanted to get her statement under oath because I knew of her past reputation. The reason I am sure as to her sobriety was because I was going to authorize a white slavery charge against Mr. Yokely based upon the testimony of the defendant. When I went down to the Commissioner—or when she came in later, she said, “I don't want to testify against Mr. Yokely because I was drunk at that time, at the time I gave you the statement,” and I told her at that time that as far as I was concerned I would have to swear, if I were called, that she was sober and I don't know if we had much more of a discussion or not.

Q. Now, then, at that time, just prior to the defendant Wilkins appearing before the Grand Jury, you told her then, did you not, that if you were called you would swear under oath she was sober when you saw her the day you took her to the Commissioner's office?

A. That is the general conversation I had with her, yes, sir.

Q. Do you now testify that to your knowledge she was not drunk?      A. To what?

Q. Do you now testify that to your knowledge she was not drunk the day you took her to the Commissioner's office? [382]

A. To my knowledge she was not drunk, yes.

Q. That is your present testimony?

(Testimony of James M. Fitzgerald.)

A. That has always been my testimony.

Q. Is your present testimony also that it is your impression she was sober at that time?

A. It is my——

Q. Did you so testify on direct examination just a minute ago?

A. What I will say is this: That as far as being drunk on that date I don't know if she was and to the best of my knowledge she was sober.

Q. I just want to get this straight. Now, is this your present testimony—I am just trying to find out what it is—is your present testimony that on the day you took her to the Commissioner's office to your knowledge she was not drunk and that your impression is that she was sober?

A. That is essentially my position or my testimony.

Q. Have you seen her only twice?

A. No; I have seen her subsequently on several occasions.

Q. Up to the time you made the statement you would swear she was sober, you had seen her only twice?

A. To the best of my remembrance I think I had only seen her twice or at least I only recall seeing her twice, yes.

Mr. Dunn: No further questions.

The Court: Any redirect?

Mr. Kirkland: No redirect. [383]

The Court: That is all. You may step down.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Kirkland: I would like to call Mr. Sachen.

JOSEPH V. SACHEN

called as a witness for and on behalf of the Government, in rebuttal, and having previously been duly sworn, testifies as follows on:

Direct Examination

By Mr. Kirkland:

Q. Mr. Sachen, you witnessed the signature of Lena Mae Wilkins on Exhibit No. 1, which I now hand you? A. Yes, sir.

Q. When did you first see Lena Mae Wilkins on September 7, 1954?

A. Between 9:00 and 9:30 at the Anchorage Police Department.

Q. At the Anchorage Police Department?

A. That is right.

Q. Was the defendant Lena Mae Wilkins drunk?

A. To my knowledge she wasn't drunk.

Q. She had been drinking, hadn't she?

A. Yes, she had.

Q. In other words, you could smell liquor on her breath? A. That is true.

Q. What time of the morning was that? [384]

A. About 9:00 o'clock, sir.

Q. And you advised her she had the right to counsel and so forth? A. Yes, I did, sir.

(Testimony of Joseph V. Sachen.)

Q. And what time did you and the defendant go before the United States Commissioner?

A. Sometime after 1:00 o'clock, sir.

Q. Sometime after 1:00? A. Yes, sir.

Q. Was the defendant drunk at that time?

A. She wasn't drunk at that time or I didn't think she was drunk in the morning when I first talked to her.

Mr. Kirkland: Thank you, sir. No further questions.

The Court: You may cross-examine.

Mr. Dunn: Will you read his last answer back, please.

(Thereupon the reporter read the last answer above.)

Mr. Dunn: No questions, your Honor.

The Court: That is all then. You may step down.

Mr. Kirkland: I have one further question I would like to ask.

The Court: What is this on, direct or redirect?

Mr. Kirkland: One more question on redirect, your Honor. I should have asked it the first time, but it slipped my mind.

The Court: Very well. You may ask the question.

Q. (By Mr. Kirkland): Did you take the defendant Lena Mae Wilkins before the [385] City Magistrate on that same occasion? A. Yes.

Mr. Kirkland: Thank you, sir.

The Court: Now is there any recross?



(Testimony of Joseph V. Sachen.)

Mr. Dunn: No, your Honor.

Mr. Buckalew: No, your Honor.

The Court: Thank you. You may step down, Mr. Sachen.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Kirkland: Your Honor, I only have one more witness and he is a witness who has witnessed the signature on this document. I contacted him and his wife had to go downtown and he is baby sitting. Could we continue the case and I will call him in the morning as my first witness.

The Court: Of course, the court wants to conclude this as soon as possible. Will there be any rebuttal, counsel?

Mr. Buckalew: I don't think so, your Honor.

The Court: Mr. Dunn?

Mr. Dunn: I think not, your Honor.

The Court: How long do you think it will take with this witness tomorrow morning?

Mr. Kirkland. Probably 5 minutes. He was along with Mr. Sachen. It is cumulative, however, we have instructions to the jury providing if one side has stronger evidence, why, they should produce it. I feel we should call the witness for [386] that reason.

Mr. Buckalew: I would like to finish the case now, your Honor, then we can get on with the arguments.

The Court: Well, it is now 4:30 and as I have

(Testimony of Joseph V. Sachen.)

pointed out to counsel so often the court reporter doesn't get paid overtime nor does the court personnel. I am sure the jurors would like to get this case over with, on the other hand, they don't get paid overtime so I wonder—if it will only take 5 minutes tomorrow morning, with that assurance I think it may not be too inequitable——

Mr. Buckalew: We have no objection to that, your Honor.

The Court: That being the case then, ladies and gentlemen of the jury, this case will be continued until tomorrow morning at the hour of 10:00 o'clock. Again I must instruct you not to discuss this case among yourselves nor permit others to discuss it with you.

(Thereupon, at 4:30 o'clock p.m., court was adjourned to the next morning, this case to be resumed at 10:00 o'clock a.m., December 29, 1954.) [387]

December 29, 1954

The Court: You may call the roll of the jury.

The Clerk: Trial jury is all present, your Honor.

The Court: You may call your next witness.

Mr. Kirkland: I would like to call Mr. Pass.

THEODORE E. PASS

called as a witness for and on behalf of the Government, in rebuttal, and being first duly sworn, testifies as follows on:

Direct Examination

By Mr. Kirkland:

Q. State your name, please, sir?

A. Theodore E. Pass.

Q. And your occupation?

A. Detective, Anchorage Police Department.

Q. And were you employed as a detective with the Anchorage Police Department on September 7, 1954?

A. Yes, sir.

Q. Is that your signature as a witness on this document?

A. Yes, it is.

The Court: Now, you are referring, counselor, to Exhibit No. 1, for the record sake?

Mr. Kirkland: Exhibit No. 1, yes, sir.

Q. Now, Mr. Pass, did you contact the defendant Lena Mae Wilkins on that day?

A. Yes, sir, I did. [389]

Q. Did you call her or did she call you?

A. No, sir, she called Chief Miller and in turn Chief Miller instructed me to go down and pick her up.

Q. Was the defendant Lena Mae Wilkins drunk or sober at that time?

A. She wasn't drunk. She had been drinking, but she certainly wasn't drunk.

Q. Now, what time of the day was this?

(Testimony of Theodore E. Pass.)

A. It was approximately 8:30 when I picked her up in the morning.

Q. And did you later accompany the defendant to the United States Commissioner's office?

A. No, I went to the United States Attorney's office with her.

Q. And what time of the day was that?

A. That was in the afternoon between 1:00 and 1:30.

Q. Was the defendant drunk or sober at that time?

A. She appeared to be sober.

Q. Was she able to walk steady?

A. Oh, yes.

Q. Or did you observe?

A. Yes.

Q. And she did not appear to you to be drunk?

A. No, sir, she definitely wasn't drunk.

Mr. Kirkland: Your witness.

The Court: You may cross-examine. [390]

### Cross-Examination

By Mr. Buckalew:

Q. Where was the defendant Lena Mae Wilkins when you went down to get her?

A. She was standing in front of the H & M Barbecue.

Q. Do they sell whiskey down there?

A. Yes, sir, they do.

Q. How was Lena Mae dressed?

A. As I recall she had on slacks and a jacket.

Q. She looked like she had been up all night?

(Testimony of Theodore E. Pass.)

A. She didn't give me the appearance of being up all night, because most of those people are up all night down there.

Q. Will you answer the question, did she look like she had been up all night?

A. Not to me, no.

Q. Did she look like she had had a good night's sleep?

A. Well, sir, I have never seen her after a good night's sleep, so I wouldn't know.

Q. Were her eyes bloodshot?

A. No, I didn't take particular notice of them. They didn't appear to be bloodshot, as I recall.

Q. Did you observe her walk?

A. I saw her when she walked to the car and when she got out of [391] the car.

Q. Did you smell liquor on her breath?

A. Yes, sir, in the morning.

Q. Pretty strong smell?

A. Well, the car was closed up and you could smell the whiskey readily.

Q. Was she in the back seat or front?

A. She was in the front seat.

Q. Was she sitting next to you?

A. Well, there was only the 2 of us in the front seat.

Q. You and Lena Mae?            A. Yes.

Q. Did she call Chief Miller first?

A. That is right.

Q. And Chief Miller sent you down to see her?

A. Yes, sir.



(Testimony of Theodore E. Pass.)

Q. What did Lena Mae tell you when you first got down there?

A. As I recall she said she wanted to sign a complaint against Yokely. That was the first word.

Q. Now, what frame of mind was she in?

A. She appeared to be quite angry at Yokely.

Q. Did she appear to be so angry she was almost in a state of hysteria or fit? A. No, no.

Q. Did she want to get Yokely in jail as soon as possible? [392]

A. Well, I don't know how soon she wanted to get him in jail. She merely stated she wanted to sign a complaint against Yokely.

Q. When somebody signs a complaint against them, doesn't it naturally follow that the complaint——

Mr. Kirkland: I object to the question as calling for a conclusion.

The Court: Objection sustained. It calls for a conclusion.

Q. The complaint was eventually signed against Yokely? A. That is correct.

Q. Was he placed in the Federal Jail?

A. No, he was placed in the Federal Jail as a result from the complaint from the United States Attorney's office.

Q. When did you first contact Mr. Sachen?

A. It was approximately 9:05 a.m., in the morning of the 7th at the City Police Station.

Q. I see. Who notified the F.B.I.? You or——

A. I have no idea. He and Mr. Clark, also of

(Testimony of Theodore E. Pass.)

the F.B.I., were at the station shortly after I arrived.

Q. At the time you talked to Lena Mae how was her language? Was it vile?

A. In the morning?

Q. Uh-huh. A. No. [393]

Q. (By Mr. Dunn): Mr. Pass, do you know whether or not later that same day the defendant Wilkins took all of her clothes to the Police Station?

A. Her clothes were at the Police Station and how they got there I couldn't say. I was busy at the Federal Building.

Q. Somebody at least took her clothes to the Police Station that day?

A. At her wishes, yes.

Q. At her wishes?

A. That is the way I understand it.

Q. Did she later remove them from the Police Station?

A. They were removed. I don't know who removed them.

Q. Would that be something the Police Department would do to accommodate her?

A. Well, to accommodate all parties, as I see it, because there was quite a bit of confusion and hard feelings. She wanted to get out of there and she had no place to go immediately. She wanted her clothes out of there and so did Mr. Yokely so we took them out.

Q. That was just an accommodation. It wasn't an

(Testimony of Theodore E. Pass.)

inducement of the particular sort for this defendant?

A. No, I don't see how it would be inducement or favor. We often do that in family squabbles and different disturbances where one wants to move out. [394]

Q. She had never stored her clothes there before? A. Not to my knowledge.

Q. Now, didn't you just testify on cross-examination by Mr. Buckalew that you had never seen the defendant after she had had a good night's sleep?

A. Well, I wouldn't know whether she had had a good night's sleep. I am not that familiar with her.

Q. What I asked you is whether or not you, as you recall your testimony elicited by Mr. Buckalew, was it or was it not to the effect that you had never seen the defendant Wilkins after she had had a good night's sleep?

A. To that effect, yes, sir.

Q. Then on the morning of September 7, the defendant had not had a good night's sleep?

A. Well, she didn't appear to have been freshly arisen. You know how you look when you first get out of bed.

Q. She looked like she had been up for quite awhile?

A. Well, she looked like she had been up—I don't know for how long.

Q. I know she was up. Well, what was her overall appearance? Was it neat?

(Testimony of Theodore E. Pass.)

A. Yes, she appeared neat to me.

Q. Didn't appear to be disheveled at all?

A. No, no, I wouldn't say so.

Q. Did you go down to the East Chester Flats at the time [395] Mr. Yokely was arrested?

A. Yes, I did.

Q. Did you go inside the house?

A. Yes, I did.

Q. Did you go into the room of the defendant Wilkins?      A. No. I don't recall.

Mr. Kirkland: I object to any further questions along that line. It is going beyond the scope of the direct examination. The defendant rested and now he is attempting to reopen his case on this matter.

Mr. Dunn: Your Honor, I am still asking preliminary questions as to the drunken condition of the defendant Wilkins on this particular morning.

The Court: Well, as I recall, Mr. Kirkland, on direct examination you asked this witness whether or not he went to the District Attorney's office between 1:00 and 1:30 or he testified as such.

Mr. Kirkland: That is right, your Honor, but at the time the statement was sworn to in the form in which it has been offered in evidence, after that it makes no difference and if counsel wants to ask those questions he has to assume the witness as his own.

The Court: I think that is right, Mr. Dunn. Therefore, the objection will have to be sustained.

Mr. Dunn: Your Honor, he has a chance for

(Testimony of Theodore E. Pass.)

redirect [396] examination. I don't mind him questioning the witness further.

The Court: No, that isn't the point, counselor. It is the question of evidentiary procedure and the question apparently has gone beyond the scope of direct examination, therefore, if you want to make him your witness you may do so.

Mr. Dunn: I am perfectly willing to adopt him.

The Court: Are you through with your cross-examination then?

Mr. Dunn: I have trouble distinguishing between the 2. I am not——

Q. (By Mr. Dunn): Now, you testified, did you not, that the defendant Wilkins seemed quite angry at the defendant Yokely?

A. In the morning when I first picked her up, that is correct.

Q. But that it did not reach the stage of hysteria or having a fit?

A. No, not to my estimation.

Q. Was she appreciably aggravated and upset?

A. She was angry. She was quite angry.

Q. Quite angry? A. Yes.

Q. Now, was Mr. Sachen present at this time?

A. When I picked her up?

Q. When she was quite angry?

A. She had simmered down considerably when we got to the [397] Police Station and all through obtaining the statement she was more her normal self.



(Testimony of Theodore E. Pass.)

Q. Then I take it it took her about 10 minutes to get settled down, is that correct?

A. No, I wouldn't say it took her ten minutes. By the time we had gotten to the station and she just got out of the car, walked back to my desk, had a seat and had a cigarette, she didn't seem to be quite as angry as she had been when she first contacted me.

Q. Did you see the defendant Wilkins at any time take a drink that day?

A. A drink of liquor, you mean, Mr. Dunn?

Q. Any intoxicating beverage?

A. No, I didn't.

Mr. Dunn: Your Honor, I think that completes my cross. Now, if this is in the nature of direct examination then I adopt the witness as my own.

The Court: Very well. You may do so.

Q. (By Mr. Dunn): Now, Mr. Pass, did you ever have occasion to enter or look into the room of the defendant Wilkins that morning?

A. I did not enter, but I do seem to recall looking into it as I went down the hallway towards the bathroom where Yokely was.

Q. Did you see anything unusual or out of the way there?

A. Not that I recall, no. [398]

Q. Did you see any clothes scattered all over the floor?

A. I don't recall seeing them, but I have a vague recollection of there might have been a pile of

(Testimony of Theodore E. Pass.)

clothing at the foot of the bed, but, as I say, I didn't go into the room.

Q. Did you see any liquor in that room?

A. I don't recall, no.

Mr. Dunn: No further questions.

The Court: Very well. Now, Mr. Kirkland, you may cross-examine.

Mr. Kirkland: No cross.

The Court: Now, do you have any redirect then, counselor?

Mr. Kirkland: No, your Honor, no redirect.

The Court: Do you have any cross on Mr. Dunn's adopting this witness, Mr. Buckalew?

Mr. Kirkland: I object to that. I don't think counsel should have any right of cross-examination.

The Court: Objection overruled, if he does.

Mr. Buckalew: I do not, your Honor.

The Court: Thank you. Very well. Then you may step down.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Kirkland: Nothing further.

The Court: Is there any surrebuttal?

Mr. Dunn: Not on behalf of the defendant Wilkins. [399]

Mr. Buckalew: None on behalf of the defendant Yokely.

The Court: Very well. That being the case then both parties rest. The court will stand in recess for

ten minutes while counsel look over the instructions before proceeding with the arguments.

(Whereupon, at 10:25 o'clock a.m., following a 10-minute recess, court reconvenes in the Judge's Chambers with all counsel and the court reporter being present, and the following proceeding were had:)

The Court: At the request of Mr. Dunn, counsel for the defendant Wilkins, all counsel are present in the Judge's Chambers desiring to take exceptions, if any they have, to the instructions in the Chambers rather than at the bench for the reason that it makes it rather crowded when there are so many counsel before the bench and also the question of keeping it quiet enough in order that the jurors may not hear the exceptions, if any they take to the instructions. That being the case, at this time the court would ask, do you agree to this, Mr. Kirkland, Mr. Plummer?

Mr. Kirkland: Yes, your Honor.

Mr. Plummer: Yes, your Honor.

Mr. Buckalew: Yes, your Honor.

Mr. Dunn: Yes, your Honor.

The Court: Very well. At this time then the Government may take their exceptions, if any they have, to the instructions. [400]

Mr. Kirkland: No exceptions.

The Court: Very well. At this time then, Mr. Dunn, you may take your exceptions to the instructions, if any you have.

Mr. Dunn: Your Honor, Mr. Buckalew and I

have not had a chance to go over these together, so some of these I make will be in the nature of a suggestion to him. This is my own; on Page 5, either at the end of the second paragraph or at the end of the page I would request that the court add on language of this nature: "In deciding the lack of understanding on the part of the person making such a statement you may consider the degree of sobriety or drunkenness of the person making the statement." And then after the word "find"—

The Court: That is on Line 22?

Mr. Dunn: Line 32, your Honor, in the last paragraph. I would suggest that the court insert the words "beyond a reasonable doubt."

The Court: Well, let the exception be noted.

Mr. Dunn: On Page 9, your Honor, or else on Page 15 after Line 14, one of the two places, I think there should be inserted the rule of law that a statement that is false in part may be distrusted as to the whole. In other words, I think that the jury should be instructed that this business of falsity in part leads to distrust of the whole, and applies not only to the testimony of a witness, but also to a signed statement. [401]

The Court: Let the exception be noted.

Mr. Dunn: On Page 12, your Honor, I think that the instruction should continue, so as to inform the jury along the following lines—however, I make this as a suggestion to Mr. Buckalew. He may make the exception or not as he pleases—"If you find that the conspiracy was in fact terminated at the time the written statement of the defendant Wilkins

was given you are not to consider the written statement against the defendant Yokely.”

The Court: Let the exception be noted.

Mr. Dunn: Do you wish to make that exception, Mr. Buckalew? That is not mine. I suggested it to him.

The Court: In that respect I suggest you let Mr. Buckalew make his own exceptions and if you desire at this time, because of the informality of our presence here. You may go into a discussion off the record on it.

Mr. Buckalew: I would like to take an exception in the alternative. I will make my exception and then take Mr. Dunn’s exception as an alternative.

The Court: You are all through then, Mr. Dunn, is that correct?

Mr. Dunn: I am not sure, your Honor. One second, please. I am, your Honor.

The Court: Very well. Mr. Buckalew, you may take your exceptions, if any you have, at this [402] time.

Mr. Buckalew: I think Mr. Dunn covered them all except Instruction No. 12. I don’t believe there is any evidence that the conspiracy extended beyond the date in the indictment. From reading the indictment, and from the very nature of the crime it appears that it terminated on the expiration of the date set out in the second count of the indictment. For that reason I believe it is a preliminary question; something that the court should rule on.



and I believe the court is in error in leaving it up to the jury to decide whether or not the conspiracy has in fact terminated or still existing on September 7.

The Court: What position does that District Attorney's office take in respect thereto?

Mr. Kirkland: Your Honor, I apologize.

The Court: On No. 12. In other words, Mr. Buckalew states to the court that the conspiracy did not continue beyond the 13th day of April.

Mr. Kirkland: The Governments contends it is still continuing. In other words, if there is an attempt to conceal it to evade detection——

Mr. Dunn: On that point, your Honor——

Mr. Kirkland: I contend they are still trying to evade detection to the conspiracy, so it is up to the jury to decide.

Mr. Dunn: On that point, your Honor, I would like to submit there isn't any evidence. The District Attorney didn't even offer any evidence of a conspiracy continuing to the present [403] time and it is because of the fact that the court has indicated in the past that the continuation of conspiracy is a question for the jury that I think the jury should be instructed with respect to that particular point, they should decide whether or not that conspiracy is continuing, and base the consideration of that statement against Yokely on their determination as to whether or not the conspiracy continued.

Mr. Buckalew: John, I don't think there is any evidence in the record that the conspiracy is continuing.

Mr. Dunn: I don't think they tried to prove it.

Mr. Kirkland: Excuse me. If the court please, that is something to be drawn from inference and from facts and circumstances I submitted to the jury in this case. There is ample evidence, in my opinion, from which the jury can draw those inferences.

The Court: I point out to you in Instruction No. 12 the last sentence says, "the date of alleged conspiracy."

Mr. Buckalew: My position must be in error on the law then because the Government would always contend that the conspiracy was still in being, otherwise they would have the duty to run down and advise the Government of all the facts.

The Court: Well, in that respect the court does believe that your theory of the law is not in harmony with the weight of the law, therefore, let the exception be noted. Do you have any others, Mr. Buckalew?

Mr. Buckalew: That is all. [404]

The Court: Very well. That being the case then let's go back into court and commence with the arguments.

(Whereupon, at 10:46 o'clock a.m., court reconvenes in the main courtroom, and the following proceedings were had in the presence of the jury.)

The Court: Let the record show all the jurors are back and present in the box. Very well. Mr. Kirkland, you may proceed.

(Whereupon, following the closing arguments of counsel for the plaintiff and counsel for the defendants, the following proceedings were had.)

Mr. Yokely: I have something to say in my behalf.

The Court: You may approach the bench with your counsel only.

(Whereupon, all counsel approach the bench, and also the defendant Yokely, and the following proceedings were had out of hearing of the jury.)

Mr. Yokely: I want to bring out to the jury about what he brought up about the witness for—Alvin Placide and this Carl Samuels. These people do exist and I haven't had time to present them here and I don't have the money to send after these people like the Government does. If I did have time I would try to get them and give me a half way fair trial.

The Court: Well, here is the position the court has to take: You had counsel appointed to represent you. They presented the case and, frankly, I think very ably. [405]

Mr. Yokely: I understand that, but I didn't have time. I thought I would get the time to get these people here.

The Court: In that respect that is something I can't do anything about at this time. When the case was presented that could have been explained. It wasn't explained and at this time——

Mr. Yokely: I tried to explain it to you back in Chambers.

The Court: Yes, I realize that, however, I point out to you that you had ample time over the Christmas holidays to have gotten them here. The case was not concluded at that time.

Mr. Yokely: It takes money and time to locate them.

The Court: Well, the court feels, Mr. Yokely, that you have had a very fair trial. Let the jury decide whether you are guilty or not. The court doesn't decide that in light of the circumstances because of your representation and I think you can be proud of your representation.

Mr. Yokely: I am proud of that, but I still didn't have time to present my case properly.

Mr. Kirkland: Excuse me. Could I be heard at this point?

The Court: The court thinks the record is clear.

Mr. Kirkland: I would like to have this terminated—indirectly what he can't do directly.

The Court: Excepting this: That his concern is to have it before the jury. The court doesn't feel there is grounds to let it go before the jury, therefore, it is just a matter of [406] record. I will have to deny your motion, Mr. Yokely, for the reasons I have given before on that basis.

(Whereupon, all counsel return to their respective tables and the following proceedings were had in the presence of the jury.)

The Court: Counsel states that he wants to make

a motion to the court, but does not want to make it in the presence of the jury, that is counselor Buckalew. That being the case then counsel may come to the bench.

(Whereupon, all counsel approach the bench and the following proceedings were had out of the hearing of the jury.)

Mr. Dunn: Let the record show, your Honor, that I am making the same motion.

The Court: Very well.

Mr. Buckalew: I would like to move at this time that the court grant a mistrial on the ground that Mr. Kirkland in his argument commented indirectly to the fact that Lena Mae Wilkins did not take the stand in her own behalf.

Mr. Dunn: If your Honor please, he made that comment twice, indirectly both times. One was where he said something to the effect that the District Attorney did not have the power to produce these other witnesses.

The Court: Yes.

Mr. Dunn: And in the second place was that Yokely hitting the defendant was rather successful in preventing her from [407] testifying.

The Court: In that respect the motion will be denied on behalf of both defendants for the reason the instruction, which the court has caused to be prepared, which is part of the instructions, points out specifically that a defendant need not, under the laws of the Territory of Alaska, take the witness stand.



Mr. Buckalew: I would like to make one comment. I feel certain that it is such a grave error that it can't be cured by the instructions. I believe that is the law.

Mr. Dunn: I believe it is, too, your Honor.

The Court: Well, motion denied.

(Whereupon, all counsel returned to their respective tables, the Court read its written instructions to the jury, and thereafter the case was submitted to the jury to deliberate upon their verdict.) [408]

December 30, 1954

The Court: The jurors may please take their places in the box.

Mr. Dunn: If the court please, we would like to speak to the judge in Chambers before we proceed here and it seems to be just as well that the jury didn't take the box until we have.

The Court: Well, it won't take long, will it, counselor?

Mr. Dunn: No, it won't.

The Court: I wonder if the jurors couldn't take their places in the box in the meantime and the court will stand in recess until the call of the gavel.

(Whereupon, at 10:12 o'clock a.m., all counsel and the court reporter being present, court reconvened in the Judge's Chambers and the following proceedings were had.)

The Court: At the request of counsel for the de-

as to what has taken place and have the bailiff stay with them until such time as she is brought over to the jail for a couple of hours and report later on. [412]

Mr. Fitzgerald: Is it a sealed verdict?

The Court: Yes.

Mr. Groh: Hand the verdict in before that.

The Court: I don't know about that. I don't think so.

Mr. Groh: I suggest the verdict be handed in before we go in and tell the jury.

Mr. Dunn: I think so, your Honor.

The Court: How? She isn't here to even waive that.

Mr. Buckalew: It might be prejudicial to the Government, if they hear she is dead drunk and——

Mr. Plummer: As I understand it, the verdict has been sealed and has already been delivered to the Clerk of the Court.

The Court: No, I don't think so. The Foreman always has it.

Mr. Buckalew: What is to prevent one of the jurors from changing their mind?

Mr. Fitzgerald: The Foreman is required by law to keep it in his custody once it is sealed.

The Court: That is right. Suppose we poll the jury and one of the jurors has knowledge that Lena Mae is now dead drunk, it would substantiate your position she was drunk all the time, then when we go to poll the jury——

Mr. Dunn: That could work either way, your Honor, and I don't think the jury should be told

about this because it is not a matter of evidence that they have a right to consider in deciding the case. All admissible evidence is already in and I don't [413] think anything further in the way of information or whatever you want to call it should be given to that jury until that verdict is out of the custody of the jury.

The Court: Yes, but here is what I am worried about, Mr. Dunn, and that is this: Supposing now that the verdict is given to the Clerk of the Court. She wasn't here when that was stipulated to.

Mr. Groh: Your Honor, how about—maybe this could solve it—how about the possibility of instructing the foreman to keep it. In other words, keep the verdict in his possession. Leave it standing in status quo and not advise them except that something unavoidable has happened and after the proceedings is over, if they desire, you can tell them after the verdict is read.

The Court: I don't know. These people could never sit again. It is going to be a new page anyway, so let's assume there might be some grounds for a new trial, we can't influence or bias them. I haven't any objection to instructing the jury as to the obligations of the sealed verdict, but I feel that they likewise should be informed of her problem.

Mr. Groh: Your Honor, I think, as Mr. Dunn points out, there is some possibility it could affect their verdict either for or against the Government.

The Court: But the verdict is already completed.

Mr. Groh: Let's assume on the polling of the jury—

Mr. Buckalew: That is where it would come in. [414]

Mr. Groh: Let's assume it is a verdict of acquittal. Because the defendant didn't show up and because she is dead drunk at the time the jury came back, when they ask, "Is that your true and correct verdict," they could say, "No, I have changed my mind."

Mr. Dunn: You see, that is what I am very much concerned about.

The Court: You might have a point.

Mr. Groh: I don't think anybody would be prejudiced if we just said something unavoidable has happened.

Mr. Fitzgerald: Say something has happened. I wouldn't say unavoidable.

The Court: All right. Now, I do believe that we ought to have the defendant brought forthwith to some——

Mr. Groh: To the jail?

The Court: Yes, and I feel she should have been brought to the jail, Mr. Dunn—for the record here—this morning as soon as you found that out.

Mr. Dunn: I didn't find it out until I came over here for the verdict.

The Court: I see.

Mr. Buckalew: I didn't find out about it until I asked Yokely where Lena Mae was.

The Court: All right. Then in the meantime what do you think we should do concerning the jury and jury bailiffs? [415]

Mr. Dunn: Your Honor, I feel that if that ver-

dict remains in the hands of the jury that the jury should be kept from wandering around on the streets or they will find out about it.

The Court: That is the position I take.

Mr. Dunn: I think they should be asked to retire to the jury room.

Mr. Fitzgerald: Your Honor, if they are going to the jury room—if she is as drunk as that it might take quite a bit to sober her up and maybe we ought to have a doctor down here.

The Court: That is the next thing I was going to come to. Then the bailiff would have to serve them lunch also and then set it down for 1:30 or 2:00 o'clock to come back into court.

Mr. Dunn: I think a doctor can sober somebody up pretty fast with shots.

Mr. Groh: Yes, Dr. O'Malley explained it to us one time.

The Court: Let's go back to court on that basis.

(Whereupon, at 10:25 o'clock a.m., following the proceedings in the Judge's Chambers, court reconvenes, and the following proceedings were had:)

The Court: You may call the roll of the [416] jury.

The Clerk: Trial jury is all present, your Honor.

The Court: Ladies and gentlemen of the jury, have you reached a verdict?

Foreman Asplund: Yes, we have, your Honor.

The Court: The court at this time instructs you, Mr. Asplund, as foreman of the jury, to retain that



verdict in your possession and not to let it get out of your possession, and the court at this time instructs the bailiffs of the jury to go with the jurors to retire to the jury room. Something has come up that requires your further service and the court will advise you as soon as possible as to what further disposition is to be made.

(Whereupon, the jury retired to the jury room to await being called and at 12:00 o'clock noon, with the jury being present, the following proceedings were had:)

The Court: Let the record show all the jurors are back and present in the box. The court has been advised by you, Mr. Asplund, that you have reached a verdict. Is that correct?

Foreman Asplund: That is correct.

The Court: You may hand it to the bailiff.

(Whereupon, the sealed verdict was handed to the bailiff and the bailiff handed it to the Court, and the Court handed the verdict to the Deputy Clerk with the instructions that the verdict be [417] read and filed.)

\* \* \*

The Court: Is that your verdict, so say ye all?

(All jurors responded yes to the question.)

The Court: Do either of counsel want the jury polled?

Mr. Buckalew: Your Honor, on behalf of Mr. Yokely I would like the jury polled.

The Court: Very well. You may poll the jury.

(Thereupon, the jury is polled and each and every juror answers that the verdicts just read were his, and the jury is excused.) [419]

United States of America,  
Territory of Alaska—ss.

I, Iris L. Stafford, Official Court Reporter of the above-entitled Court, hereby certify:

That the foregoing is a true, full and correct transcript of the proceedings on the trial of the above-entitled cause, not including the examination of the jurors nor the closing arguments of counsel to the jury, taken by me in stenograph in open court at Anchorage, Alaska, on December 20, 21, 22, 23, 27, 28, 29, and 30, 1954, and thereafter transcribed by me.

/s/ IRIS L. STAFFORD.

[Endorsed]: Filed June 9, 1955.

---

[Title of District Court and Cause.]

Cr. 3122

### CLERK'S CERTIFICATE

I, Wm. A. Hilton, Clerk of the above-entitled court, do hereby certify that pursuant to the provisions of Rule 10 (1) of the United States Court of

Appeals, Ninth Circuit, the provisions of Rule 75 (g) (o) of the Federal Rules of Civil Procedure, and the designation of counsel for Appellant, I am transmitting herewith the Original Papers and Exhibits in my office dealing with the above-entitled action or proceeding, together with the court reporter's transcript of all of the testimony taken at the trial of the cause.

The papers and exhibits transmitted herewith are described as follows:

1. Indictment.
2. Court's minutes of December 20, 1954, appointing counsel.
3. Defendant's proposed instruction No. 1.
4. Defendant's proposed instruction No. 2.
5. Defendant's proposed instruction No. 3.
6. Court's instruction to jury.
7. Verdict.
8. Motion for judgment of acquittal or new trial.
9. Order extending time to renew motion for acquittal or in the alternative for new trial.
10. Judgment, sentence and commitment.
11. Court's minutes of February 7, 1955, denying motion for new trial.
12. Notice of Appeal.
13. Appellant's designation of contents of original record.
14. Court's memorandum opinion dated March 8, 1955.

15. Order of Appellate Court dated March 28, 1955.

16. Order of Appellate Court dated May 6, 1955, extending time to docket record on appeal.

17. Reporter's transcript of testimony in 2 volumes.

18. Appellee's exhibits 1, 2, 3, 4, 5, 6, and 7.

The papers herewith transmitted constitute the record on appeal from the judgment filed and entered in the above-entitled action by the above-entitled court on January 18, 1955, to the United States Court of Appeals at San Francisco, California.

Dated at Anchorage, Alaska, this 24th day of June, 1955.

[Seal]      /s/ WM. A. HILTON,  
Clerk of the United States District Court, Third  
Division, Alaska.

---

[File of District Court and Cause.]

Cr. 3122

#### CLERK'S CERTIFICATE

I, Wm. A. Hilton, Clerk of the above-entitled Court, do hereby certify that I am transmitting to the United States Court of Appeals for the Ninth Circuit Original Papers dealing with the above-entitled action or proceeding not included with the papers transmitted to said Court of Appeals with

my certificate dated June 24, 1955, which papers, among others, includes the court's minutes of December 1, 3 and 20, 1954, Setting Time for Arraignment, Arraignment and Setting Time for Plea, Plea of Not Guilty, and all proceedings pertaining to the trial. Said papers herewith transmitted to be and they are hereby consolidated with the original papers transmitted on the 24th day of June, 1954, as aforesaid.

Dated at Anchorage, Alaska, this 6th day of September, 1955.

[Seal]      /s/ WM. A. HILTON,  
Clerk, United States District Court, Third Judicial  
Division, Alaska.

---

[Endorsed]: No. 14798. United States Court of Appeals for the Ninth Circuit. James Taylor Yokely, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed June 27, 1955.

            /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



In the United States Court of Appeals  
for the Ninth Circuit

No. 14798

JAMES TAYLOR YOKELY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS

Appellant designates the following as points on which he intends to rely:

1. That the court erred in denying the defendant's motion for a mistrial at the close of all the evidence.

2. That the court erred in denying defendant's motion for judgment of acquittal and in the alternative a new trial.

3. That the verdict is contrary to the weight of the evidence.

4. That the verdict is not supported by substantial evidence.

5. That the court erred in giving instruction No. 12.

6. That the court erred in charging the jury and specifically in refusing to charge the jury as requested in defendant's proposed instruction No. 1.

7. That the defendant was substantially prejudiced and deprived of a fair trial by reason of the comment of the prosecuting attorney on the failure of the defendant Lena Mae Wilkins to take the stand.

8. That the court erred in admitting the government's exhibit No. 1.

DAVIS, RENFREW &  
HUGHES.

By /s/ JOHN C. HUGHES.

Receipt of copy acknowledged.

[Endorsed]: Filed September 2, 1955.